In preparation for the development of the statewide Policy for the Implementation of the Storm Water Program (Policy), the storm water staff conducted three listening sessions in January 2005 to help staff understand the concerns the stakeholders have with the existing program, and to gather input on how to address these concerns. A total of approximately 250 people attended the listening sessions in Diamond Bar, Sacramento and Oakland, representing Phase I and II MS4 permittees and industry and environmental groups. Fifty people spoke at the listening sessions, and staff has received 20 written comments, which are posted following this brief summary of the comments we received.

The most common themes of the comments are:

1. Funding in the post Proposition 218 environment

   Many MS4 permittees are concerned about the lack of resources to implement programs required in their permits. They suggest that the Policy recognize local funding problems and allow the municipalities and school districts more time to implement program activities. They also suggest that the Policy take into consideration of the cost and benefit of a required program.

2. Consistency

   There are concerns about the inconsistency in current program implementation by state and regional boards and local jurisdictions. These concerns include inconsistent permit requirements among regions and/or within a region, inconsistent interpretation of general permit terms, discrepancy between requirements of state and regional permits, inconsistent compliance inspections conducted by federal, state and local agencies, and inconsistent interpretation of the adequacy of a best management practice (BMP).

3. Maximum extend practicable (MEP)

   Most comments we received suggest that the Policy must clearly define MEP on a statewide basis.

4. Effluent limits/Numeric standards

   Many are concerned that end-of-pipe numeric standards for storm water are difficult to achieve given local jurisdictions' budget constraints, and would result in third-party lawsuits. There are also concerns that numeric standards could force the municipalities to focus their resources on specific constituents and as a result, efforts to improve water quality on a watershed basis will be neglected. In other words, while a discharger may be in compliance with a benchmark or numeric limit, the receiving waters could still be stressed due to other pollutants or synergistic effects, etc. . They suggest that the Policy maintain the current iterative, adaptive management approach to regulating discharge of storm water, and that quantitative measures should only be used as a tool to measure the effectiveness of a BMP.

Comments received from the environmental groups suggest that numeric standards are necessary to provide consistency, certainty, transparency, accountability and enforceability to the storm water program.

5. Relationship with other water quality programs

   There are concerns about the confusion caused by different requirements between the storm water permits and other program requirements such as total maximum daily load (TMDL) and Clean Water Act section 401water quality certification, the California Toxic Rule (CTR) and the California Ocean Plan.

6. Wet weather discharge

   Many suggest that the Policy should recognize the unique, variable nature of storm water. Storm water discharges are not like waste water discharges where the flows and pollutant loadings are somewhat predictable. The quantity of a storm water discharge is linked to the storm size. Pollutant loading is linked to factors including the antecedent dry period and the time and intensity of a storm event. The issue of the variability of pollutant concentrations during a storm event was also raised.

7. Monitoring requirements

   Issues regarding the monitoring requirements include whether compliance monitoring is appropriate for storm water, whether industrial group monitoring should be allowed, whether benchmarks and trends in pollution loading should be used to assess a program, etc. Some suggest that monitoring should be used to make management decisions, but should not be the only parameter used for measuring compliance. There needs to be time built into monitoring programs to allow for the effects of program implementation to be quantified.

8. Cross media/multi-agency jurisdiction problems

   Some suggest that the Policy should take into consideration that some aspects of storm water are also addressed by other program or agencies, such as air deposition and pesticide regulations.

From: "Perry Beck" <pbeck@loomis.ca.gov>
To: <jmu@waterboards.ca.gov>
Date: 11/23/04 10:30AM
Subject: DRAFT POLICY FOR IMPLEMENTING STORM WATER PROGRAM

We would submit an issue to add to the list of issues to be discussed at the January 2005 listening sessions. The issue is "funding storm water programs - monitoring, compliance, permitting and standards."

Without method to obtain money (legislation will likely be needed) jurisdictions are going to be in a bind of choosing whether to do storm water programs or something else. That choice should not be necessary. It is time for storm water policies to take their place among water, sewer and other utilities and be paid for through fees and/or taxes of some kind. This should not be left to individual entities trying to come up with some fee and/or tax that may find support from the taxpayer. Funding method(s) should arise from a cohesive statewide policy that could still allow for varying fee and/or tax amount in cities and counties recognizing that agencies would differ in how much money would be needed to implement storm water policies. Again, this would likely take legislation.

Thank you for including this in issues to be discussed.

PERRY BECK, TOWN MANAGER
TOWN OF LOOMIS
916-652-1840

CC: <jlewis@cacities.org>

From: "Leslie Gault" <LGault@placer.ca.gov>
To: <jmu@waterboards.ca.gov>, <tfiller@waterboards.ca.gov>
Date: 11/23/04 2:55PM
Subject: For the Stormwater policy listening sessions agenda

Jennifer and Thomas:

I was just looking at the draft topics agenda for the State Water Board Stormwater policy listening session, and some additional concepts need to be added:

- interaction between 'no non-stormwater discharge' criteria and the activity-based BMPs in the permit when the sizing criteria (or activity) doesn't cut it--especially with respect to providing sizing criteria that do not remove all the sediment (suspended colloidal soils)

- requirements (or not) for advanced treatment--when where why (if at all) is it appropriate?

- interaction of the Municipal permit construction MCM and the Construction General permit. (what dividing line the duplicative requirements?)

- improved guidance and definition of the BMP sizing criteria in attachment 4, esp "24 hour runoff" term, et al. Few people (regulators included) seem to actually understand what the permit is saying, and if I do understand it correctly, the methodology probably doesn't warrant further expanded use (such as has just occurred with this inclusion in the Statewide permit) without intensive scrutiny and additional development of the input data, etc.

- definition of 'effectively prohibit' (if not defined in great detail, at least tell us whether the permit means 'effectively' in the context of 'in effect', or 'doing it very well')

- criteria for program effectiveness evaluations (or "results")

Thank you
Leslie Gault

Leslie Gault, P.E.
Water Quality Coordinator
(530) 889-7503 fon
(530) 889-7589 fax
lgault@placer.ca.gov

CC: "Bob Costa" <BCosta@placer.ca.gov>

To: tt@calepa.ca.gov
Cc: cwilson@swrch.ca.gov; FUJIBC@dwq.swrcb.ca
Subject: No excuses!
Importance: High

Dear Mr. Tamminen:

No excuses! We are requesting enforcement of the Porter Cologne Water Quality Control Act and Clean Water Laws towards the pressure washing/water jetting industry and the companies who utilize their services.

Due to lack of consistent enforcement of the Clean Water Laws by CA city and county water quality control regulators , the pressure washing and water jetting industries continue to be big players when it comes to polluting millions of gallons of our State's waterways, daily. Operators and users of pressure washing and water jetting equipment sidestep the Clean Water Laws by continuing to discharge their contaminated wastewater to the storm drains or the receiving POTW without removing the contaminants from the wastewater.

Companies, such as ours, Parker West International, Vaxjet and Cyclone Aeration Flotation Systems have developed wastewater treatment technology which enables the operators of pressure washing and water jetting equipment to contain, collect and clean their wastewater to meet sewer discharge requirements in a very simplistic, affordable manner. We have been trying to successfully commercialize for 8 years. However, we are not gaining government support to succeed at leveling the playing field against the companies who continue to mismanage their wastewater.

Currently, we can't compete against the polluters, because in many large CA cities, the POTW's who operate and receive the wastewater generated by commercial and industrial cleaning companies, state that this industry does not have to clean their wastewater prior to discharging to the sewer. These mobile companies are allowed to travel from city to city, discharging untreated wastewater containing automotive fluids, paints, cooking grease, etc., without removing the contaminants first to meet the established pretreatment standards that are required by stationary commercial and industrial businesses who generate a like wastestreams.

Chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are contained in gasoline, diesel fuel and other petroleum products and byproducts. Pressure washers are used to clean service stations, refineries, chemical plants, transport and storage operations, parking garages/lots, including marine terminals. One quart of used motor oil contaminates 250,000 gallons of fresh water!

A few examples of cities who are exempting the pressure washing industry and the users of their services from the water quality controls laws are Sacramento, San Jose and Santa Clara. In the Oakland Bay area, there is no enforcement towards the pressure washing industry. However, in some cities, we are required to remove the oil, grease, metals and paints prior to discharging to the sewer. Examples of these cities are Central Contra Costa County, Vallejo and Sonoma County.

This lack of Statewide consistency of enforcement of the Clean Water Laws,

prevents new technologies, such as ours from commercializing in the State of California. Even the Public Works Departments in each city we have contacted, continue to clean public owned properties, utilizing their own employees and pressure washing equipment or service providers who are not in compliance, but offer the cheapest price.

Our contention is that if stationary businesses who generate wastewater contaminanted with automotive fluids, paints, cooking grease, etc., are required to effectively treat their wastewater to remove the contaminants prior to discharging to the sewer outlet, why are all MOBILE service companies exempt from the Clean Water Laws, simply because their business is on wheels?

Pressure washers are the most efficient, cost effective way to remove contaminants from hard surfaces. Outdoor hard surfaces need to be cleaned to reduce pollutants from entering the storm drains. But, this is an evolving industry which is growing very quickly. New, more powerful, driving, robotic and remote controlled machines have recently been developed, so that the operators can clean more surface, faster and more efficiently and for a cheaper price. Examples of some of the uses for this equipment is to remove floor coatings and automotive fluids from pavement and cement (parking garages/lots, gas stations, airport runways, transit stations, aircraft carriers). They are also used to remove paint stripes and fuel spills from streets, airport runways and from street curbs. A couple of examples of companies who are manufacturing this type of equipment are www.nlb.com and www.staffordwashsystems.com.

The Water Quality Control Officials throughout the State need to acknowledge, coordinate and establish uniform standards that allow us to succeed in providing a solution to stop this source of water pollution. The nation's wastewater treatment infrastructure is crumbling and the federal officials estimate it would cost hundreds of billions of dollars to cope with increased demand for sewage treatment. Pressure washing and water jetting activities yield a complex, diversified matrix of wastestreams that should be treated at the source to help defray the out of control costs of operating efficient POTW's.
They shouldn't continue to tiptoe around the issue by trying to get special exemptions that are unavailable to other businesses.

Can you help us?

Cathleen Parker
President
Parker West International, LLC
Cleaning America-Preserving Our Waterways
707-579-1257
www.parkerwest.com
4520 Montecito Ave.
Santa Rosa, CA

From: "Scanlin, Jim" <jims@acpwa.org>
To: "'jmu@waterboards.ca.gov'" <jmu@waterboards.ca.gov>, "'tfiller@waterboards.ca.gov'" <tfiller@waterboards.ca.gov>
Date: 1/3/05 11:18AM
Subject: Development of a Draft Policy For The Implementation of the StormWater Program

Dear Ms. Mu and Mr. Filler,

These comments are filed with the State Board on behalf of the Alameda Countywide Clean Water Program ("ACCWP") in response to the November 19, 2004 notice regarding Development of a Draft Policy For The Implementation of The Storm Water Program. The ACCWP MS4 is comprised of 17 local government agencies that have joined together to form the ACCWP. The permittees in the ACCWP are regulated by a "third round" NPDES permit issued by the San Francisco Bay Regional Board, Order R2-2003-0021.

The ACCWP and the Program permittees are committed to full compliance with the requirements of the NPDES permit and the mandates of state law and the federal Clean Water Act relating to urban stormwater runoff. Our record in the San Francisco Bay Region demonstrates this commitment. The ACCWP welcomes the consideration of this draft Policy by the State Board. The ACCWP is especially interested the following issues in the State Board's consideration of this draft Policy: the relationship between TMDLs and permit requirements; timelines for TMDL and other requirement compliance; clear definition of standards so as to allow permittees sufficient time to provide the necessary funding for mandated programs; clarification and simplification of monitoring and reporting requirements; and the need for providing some general statewide consistency of standards while at the same time allowing for regional and program specific needs and differences. We will provide more detailed comments as the draft Policy progresses. It should also be noted that MS4s in the San Francisco Bay region are currently meeting and discussing with Regional Board staff the development of a regional municipal storm water permit for the San Francisco Bay region.

Representatives of the ACCWP will attend the public meeting in Oakland on January 21, 2005 and will participate in the ongoing State Board process in the development of this draft Policy. Please provide us with notice of your proceedings.

Jim Scanlin
Alameda County Public Works Agency
Clean Water Division
(510) 670-6548

CC: "Tom (E-mail)" <tem@rb2.swrcb.ca.gov>, "Dale Bowyer (E-mail)" <dcb@rb2.swrcb.ca.gov>, "Abbas (E-mail)" <amasjedi@ci.pleasanton.ca.us>, "Alex Ameri (E-mail)" <Alex.Ameri@ci.hayward.ca.us>, "Bgross (E-mail)" <bgross@albanyca.org>, "Brian (E-mail)" <blorimer@ci.pleasanton.ca.us>, "Brooke Levin (E-mail)" <blevin@oaklandnet.com>, "bsilva (E-mail)" <bsilva@ci.fremont.ca.us>, "Carla Schultheis (E-mail)" <carla@acpwa.org>, "Chris Andres (E-mail)" <chrisa@acpwa.org>, "cvasquez (E-mail)" <cvasquez@ci.union-city.ca.us>, "dakagi (E-mail)" <dakagi@ci.berkeley.ca.us>, "Darren (E-mail)" <dggreenwood@ci.livermore.ca.us>, "Debra Kunisawa (E-mail)" <debra.kunisawa@ci.hayward.ca.us>, "Dennis Jones (E-mail)" <dennis.jones@newark.org>, "Diamera (E-mail)" <diamera@acpwa.org>, "Dije Ndreu (E-mail)" <Dije.Ndreu@ci.hayward.ca.us>, "Fred

(E-mail)" <fejarvis@eoainc.com>, "G. Robert Hale (E-mail)" <bobh@acpwa.org>, "GGrimm (E-mail)" <gjgrimm@mindspring.com>, "Gosselin, Sharon" <sharon@acpwa.org>, "Hank Van Dyke (E-mail)" <hvan-dyke@ci.emeryville.ca.us>, "HOLLY GUIER (E-mail)" <HOLLY.GUIER@newark.org>, "Jan O'Hara (E-mail)" <jbo@rb2.swrcb.ca.gov>, "Jennifer Krebs (E-mail)" <jak@rb2.swrcb.ca.gov>, "Jim Barse (E-mail)" <jbarse@ci.alameda.ca.us>, "John Camp (E-mail)" <jcamp@ci.san-leandro.ca.us>, "John_Michels (E-mail)" <John_Michels@dot.ca.gov>, "KCote (E-mail)" <kcote@ci.fremont.ca.us>, "klichten (E-mail)" <khl@rb2.swrcb.ca.gov>, "Lesley (E-mail)" <lcestes@oaklandnet.com>, "Linda Ajello (E-mail)" <lajello@ci.piedmont.ca.us>, "Linda Bulkeley (E-mail)" <bulkeley@eoainc.com>, "Loren Jensen (E-mail)" <ljensen@ci.berkeley.ca.us>, "Lori Pettegrew (E-mail)" <lap@eoainc.com>, "Louise (E-mail)" <louisec@acpwa.org>, "Mary Lim (E-mail)" <mlim@zone7water.com>, "Matthew Naclerio (E-mail)" <mnaclerio@ci.alameda.ca.us>, "Melissa Morton (E-mail)" <Melissa.Morton@ci.dublin.ca.us>, "Michael Bakaldin (E-mail)" <mbakaldin@ci.san-leandro.ca.us>, "Mona Olmsted (E-mail)" <molmsted@zone7water.com>, "Myriam Zech (E-mail)" <mlz@swrcb.ca.gov>, "Nathan French (E-mail)" <nfrench@ci.berkeley.ca.us>, "Nicole Narver (E-mail)" <nnarver@ci.fremont.ca.us>, "Peter Schultze-Allen (E-mail)" <pschultze-allen@ci.emeryville.ca.us>, "Ron May (E-mail)" <hmay@ci.san-leandro.ca.us>, "Saied Aminian (E-mail)" <saied.aminian@ci.dublin.ca.us>, "Steve Aguiar (E-mail)" <smaguiar@ci.livermore.ca.us>, "Steve Cusenza (E-mail)" <scusenza@ci.pleasanton.ca.us>, "Terry (E-mail)" <terry_cooke@urscorp.com>, "W Madison (E-mail)" <wmadison@oaklandnet.com>

MEMORANDUM

To: Jennifer Mu and Thomas Filler, State Water Resources Control Board
From: Roger James, Water Resources Management
Date: January 4, 2005

SUBJECT: Policy for Implementation of the Storm Water Program

The following comments and suggestions are submitted for your consideration in drafting the subject policy. They are presented in the format of the enclosure to the notice of the listening sessions.

Cross - Program Issues

TMDLS – The proposed statewide policy should implement the November 22, 2002 USEPA guidance issued to the regions regarding TMDL WLAs for storm water sources and NPDES permits based on WLAs (copy attached) and the USEPA Appeals Board February 20, 2002 decision Nos. 00-14 & 01-09 regarding the Government of the District of Columbia Municipal Separate Storm Water System NPDES Permit No, DC 0000221. When BMPs are allowed as a form of effluent limitations rather than a numeric approach the NPDES permit administrative record including the Fact Sheet should document that the BMPs will achieve the WLA. To implement this approach the regional boards should require municipalities to submit a technical report pursuant to section 13267 of the California Water Code (CWC) prepared by a registered professional engineer that documents and certifies that the BMPs will achieve the WLA.

401 Certifications - Applications for water quality certification under section 401 of the Clean Water Act (CWA) should include a detailed analysis prepared by a registered professional engineer certifying the projects BMPs or control measures will comply with each of a basin plan's water quality standards.

Ground Water Protection - The Underground Injection Control (UIC) Program was established by the 1993 Safe Drinking Water Act (SDWA) and is described in 40 CFR 144. Additional rules regarding Class V wells were issued in 1995, 1999 and 2001. EPA has developed regulations to implement the UIC program; however, the State of California has not opted to implement the program. The state and regional boards have encouraged the infiltration of storm water runoff and in many cases this is inconsistent with the UIC Program and in the San Francisco Bay Region contrary to the basin plan. The portion of the UIC program applicable to storm water can be briefly summarized as following:

1. Class V wells are those that are most likely to be associated with storm water runoff and include motor vehicle waste disposal wells (auto body shops, new and used auto car dealerships, specialty repair shops), industrial wells (those that receive non-hazardous industrial and commercial waste and fluids from a variety of specified sources, spills from process areas, loading docks, certain carwashes, etc) drainage wells receiving storm water runoff in municipalities.
2. New motor vehicle waste disposal wells were prohibited as of April 2000 in groundwater protection areas and existing wells are to be phased out unless they

meet permit requirements specifying compliance with MCLs at the point injection, conduct monitoring programs and implement BMPs.

3. The drainage wells have been defined to include sumps, drywells, french drains and anything where the depth is greater than the surface area. Subsurface fluid distribution systems such as swales with underdrains fall within the definition. These drainage wells may include those at commercial or industrial sites provided there are barriers to spills and only insignificant amounts of waste present that cannot be separated from runoff. The 2001 rule did not impose new requirements on storm water drainage wells and are generally permitted by rule provided they register with the permitting authority and do not endanger the water supply.

As indicated above California has not sought to implement the UIC program and it is being administered by USEPA-IX at a minimal level. The threat to the state's groundwater from infiltration of storm water runoff without adequate pretreatment or monitoring is not being adequately assessed and policies are needed to coordinate objectives of the UIC and storm water programs. Funding to achieve coordination of the SDWA and CWC/CWA and implementation is needed and a potential source of funds lies within the waiver in section 13267(4)(A) where annual fees can be collected from activities regulated by the UIC program since they are discharging wastes.

Monitoring Issues

TSS vs SSC – The USGS has developed a policy that finds the Total Suspended Solids (TSS) method of analysis provides erroneous data on the measure of solids suspended in storm water runoff and loading errors of several orders of magnitude. They have adopted the Suspended Sediment Concentration (SSC) method of analysis – ASTM D-3977-97 for determining suspended sediment in urban runoff. Studies for USEPA have further found that TSS is a poor surrogate for pollutants found in storm water runoff. This measurement of suspended sediments covers a number of issues including the characterization of pollutants in storm water runoff, determination of TMDL loadings, measurement of BMP performance and assessment of impacts of storm water runoff on beneficial water uses. There is no easy to solution to the problem that USGS has raised; however, this issue must be faced before meaningful progress can be made in the implementation of TMDLs where WLAs have been applied to storm water discharges. John Gray, Senior Hydrologist with USGS headquarters should be consulted to best advise the Board on how to proceed with this issue.

Sample Collection and Management – Techniques for collection and management of storm water runoff samples have been found to significantly underestimate pollutant loadings and BMP load reductions. Several papers that have been presented to the Transportation Research Board are attached that provide some background on this issue. New and improved techniques are needed and the Board should call for and support the development of new and improved techniques in the proposed policy.

Compliance Issues

Time to Implement Program - Regional boards that place a water segment in the category of Water Quality Limited Segments Being Addressed pursuant to the State Board's September 2004 "Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List" due to impairments from storm water discharges should

within 60 days of that action initiate enforcement actions that include a time schedule for achieving compliance with the NPDES permit. The enforcement action time schedule should specify the time and actions that a permittee must take to achieve full compliance with the NPDES permit. Depending on the impact and extent of the violations the regional board should be required to consider limiting additional connections to the community sewer system if those connections would contribute to the existing violations or in the case of failure to include the limitation the rationale for not including the limitation of additional connections.

Similar actions should be taken by the regional boards when exceedances of water quality standards are determined through the iterative process specified in storm water NPDES permits.

Load Reductions - Load reductions to demonstrate compliance with an NPDES permit should only be allowed if the TMDL specified the WLA specific for the permittee and the ensuing NPDES permit administrative record documented that the BMPs were going to achieve the load reduction. The process for allowing use of BMPs instead of specific load reductions should follow the process described in Cross-Program Issues – TMDLs.

Standards Issues

Applicable Standards - The water quality standards contained in the Basin Plan should be applied to storm water discharges. The statewide policy should contain and describe an administrative regulatory process where permittees can petition a regional board for the temporal and spatial exceedance of a specific water quality standard. The process should describe the application and approval process, information required of the permittees including current levels and frequency of exceedances, costs of control measures including treatment technologies available and investigated that would achieve compliance without the requested exceedance, estimated impact on basin plan beneficial uses if requested exceedance is granted. This process would be similar to a use attainability analysis, but could be applied on a regional basis.

Permitting Issues

No comments or suggestions.

Please contact me at roger.james@worldnet.att.net or 925-631-7950 if you have any questions about these comments or suggestions.

From: "Cathy Parker" <cparker@parkerwest.com>
To: <jmu@waterboards.ca.gov>
Date: 1/5/05 10:44AM
Subject: FW: No excuses!

We have received a notice regarding the upcoming January public "listening" meetings for development of a draft policy for implementation of the storm water program.

Please see attached correspondence that states our position regarding wastewater management generated by pressure washing and water jetting activities. We do not see this specific issue listed for discussion. Is it on the agenda? If so, are we allowed to speak or comment at these meetings?

Cathleen Parker
President
Parker West International, LLC
Cleaning America-Preserving Our Waterways
www.parkerwest.com
707-579-1257

-----Original Message-----
From: Cathy Parker [mailto:cparker@parkerwest.com]
Sent: Tuesday, January 04, 2005 12:53 PM
To: FUJIB@dwq.swrcb.ca.gov
Cc: cwilson@exec.swrcb.ca.gov
Subject: FW: No excuses!
Importance: High

We need a coordinated effort between the Storm Water and POTW Agencies to be effective in stopping the pollution generated by mismanagement of the wastewater generated by pressure washing activities. These are mobile businesses that travel from city to city. Consistent and crystal clear statewide policy for wastewater management should be mandatory throughout the state, rather than differing from city to city.

These companies should be required to utilize the best available technology to conform to zero discharge to the storms drains and meeting pretreatment standards that are required by all other businesses who generate a like wastestream.

Please see our attached letter to the Mr. Tamminen.

-----Original Message-----
From: Cathy Parker [mailto:cparker@parkerwest.com]
Sent: Tuesday, January 04, 2005 11:38 AM

CALIFORNIA'S
COALITION
for ADEQUATE
SCHOOL HOUSING

www.cashnet.org

January 6, 2005

Arthur G. Baggett, Jr., Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Chairman Baggett and Members:

This letter is intended to provide comments on behalf of the Coalition for Adequate School Housing (C.A.S.H.) concerning the State Water Resources Control Board's (SWRCB) draft policy for implementing the Storm Water Program. Because the agenda for the listening sessions is very general, C.A.S.H.'s comments are general as well.

History of C.A.S.H.'s Involvement

In 2002, C.A.S.H. became aware that under the SWRCB's revised General Permit for storm water, schools would now be regulated. In response, the C.A.S.H. Board of Directors created the C.A.S.H. Storm Water Committee to address storm water regulation issues on behalf of our members. The Committee informed our members about the implications of the revised Permit, and began working with the SWRCB staff to ensure the concerns of our members were considered.

In the past two years, C.A.S.H. has held workshops to inform our members about the SWRCB's requirements, held workshops for school maintenance professionals concerning the post-construction requirements, held a special joint workshop with representatives from both municipalities and schools, worked with county offices of education concerning options for group monitoring, worked with and served as a resource for other statewide education organizations, and organized presentations on storm water at our Annual, Spring and Fall conferences. In short, C.A.S.H. has been a leader in storm water compliance in the education community.

Issues of Concern

C.A.S.H. has appreciated the opportunity to work with the SWRCB on issues of mutual concern, and looks forward to doing so in the future. C.A.S.H. does have some concerns about particular aspects of the Storm Water Program, and hopes that the SWRCB will take these concerns under consideration in the process of revising the Storm Water Program.

The following are issues of concern for C.A.S.H:

- Consistent policy between the State and Regional Boards
- Group monitoring as an option for school districts
- How to address cross-boundary issues
- Consistency between Phase I and Phase II requirements
- Consistency between Construction Permit and Small MS4
- Use of quantitative parameters to measure compliance
- Definition of "maximum extent practicable"
- Ensuring that "grandfathered" school projects remain exempt

Thank you for the opportunity to comment on the proposed draft Storm Water Program. C.A.S.H. and its members are available to assist you. Please do not hesitate to contact us if you have questions or would like to discuss these matters in further detail.

Sincerely,

Ian Padilla
Legislative Advocate

cc: Bruce Fujimoto, SWRCB
Jennifer Mu, SWRCB
Thomas Filler, SWRCB

b. A means by which technologies are proven to show that they can achieve pollutant removals claimed – e.g. submittal and evaluation of consistently collected performance data.

The State of California is currently participating in the Interstate Technology Regulatory Council and is a part of this council's Technology Acceptance Reciprocity Program **(TARP)**. This program is already in place and has established specific protocols to be followed in order to verify that a stormwater treatment technology will achieve a claimed level of performance. With minimal investment, California can implement this program at the State level to assist the regulated community with managing the BMPs that are installed in new and re-development projects.

While the local communities can continue to evaluate what level of investment constitutes Maximum Extent Practicable (MEP) based on their local environmental and economic conditions, the State can manage the verification program that will help these local communities select which BMPs will achieve their pollutant removal objectives to achieve MEP.

The structure we envision and would like to suggest:

1) A technical review committee (TRC) is established with one member from each RWQCB and members from a representative number of copermittee groups. One SWRCB staff member is responsible for coordinating efforts of the group. A workable size would be 20 to 30 persons with review responsibilities shared.

2) The TRC takes the TARP protocol and establishes BMP data submittal guidelines such as those currently used by the State of Washington or New Jersey. Suggestions would be:

   a) Establish standards for the definitions and analytical procedures for pollutants being regulated. For TSS, establish the particle size distribution to be tested to verify performance claims. The Water Environment Research Foundation (WERF) is working on some research to establish and define standards that make sense for stormwater with respect to the measure and analysis of TSS. Different jurisdictions can establish different Particle size distributions and design storms based on their requirements, but technology verification needs to specify what particle size distributions are removed by different devices.

   b) Establish submittal programs for both lab and field data to evaluate the BMP. The State of Washington has the best process to date but having a hard time maintaining high standards. In the Washington program, interim use designation is granted based on performance shown in the laboratory following set protocols. General use designation is granted based on performance shown at several field sites. This is done so that systems can be installed and monitored, a process that can take years to complete.

c) The TRC takes comment from outside stakeholders such as manufacturers. Allow them to be part of the stakeholders group to establish policy but not in the review and acceptance portion of the process.

d) The TRC established the conditions for reciprocity under TARP, where data submitted to another TARP member can be used for California approval.

e) Classify non-proprietary BMPs as screening, settling and filtration technologies.

f) Establish the process by which performance data will be reviewed and the standards to which it will be compared.

g) Establish BMP size versus performance requirements based on submitted verification data. For example, for a settling system to achieve its claimed 80% removal of TSS with particle sizes between 100 and 200 microns, its hydraulic loading rate should be no more than X gpm/ft^2 based on performance data collected in accordance with the established protocols.

3) The TRC coordinator assigns review responsibilities to various committee members based on their expertise and availability. For example, metals removal data would be reviewed by members with familiarity with metals removal processes and metals chemistry. A minimum of 3 reviewers reviews each submittal.

4) The TRC establishes the baseline removal expectations and design criteria for non-proprietary structural BMPs (e.g., swales, wet ponds, wetlands, extended detention basins, infiltration basins, rain gardens, sand filters) based on the collective research available. This is used to provide guidance to the regulated community and to provide a comparison for equivalent proprietary BMPs.

5) The TRC reviews submittals made by manufacturers and provides certifications for those technologies whose performance data was collected in accordance with the established protocol and verifies performance claims and certifies the pollutant removal abilities of the technologies.

6) Fund the program so that staff can devote sufficient time to develop the protocols, establish the non-proprietary pollutant removal expectations and design criteria, review submittals and grant certifications.

7) Establish recommended pollutant removal objectives for different types of developments based on the expected pollutant loadings from those developments.

8) Establish recommended pollutant removal objectives for different types of developments when there is an impaired waterway with an existing TMDL or an anticipated TMDL.

Because of the work done to date by California to participate in the TARP program, we feel that implementing the above items would be a minimal investment. This would allow for a much more consistent approach to improving water quality throughout the state on new and

STORMWATER MANAGEMENT INC.

January 6, 2005

Mr. Bruce Fujimoto
Chief of Stormwater Section
California State Water Resources Control Board
1001 I Street
Sacramento, CA 95812-0100

c/o Jennifer Mu and Thomas Filler

RE: DEVELOPMENT OF A DRAFT POLICY FOR THE IMPLEMENTATION OF THE STORM WATER PROGRAM – COMMENTS FROM STORMWATER MANAGEMENT, INC.

Dear Mr. Fujimoto.

Stormwater Management, Inc. has been in the business of developing and manufacturing structural post-construction stormwater Best Management Practices (BMPs) for the past 10 years. Based on this experience and our leadership position in the manufactured BMP market, we would like to share some of our experience with your staff regarding various state programs for managing the use of BMPs to remove pollutants from runoff and achieve water quality objectives. We have been working extensively with the States of Washington, New Jersey, Maryland, and Maine and have been part of the evolution of their programs over the years. We believe California is poised to become a leader in effective and efficient water quality regulation and are delighted to be operating in the State during these exciting times.

We intend to be represented at one of your listening sessions in the upcoming weeks and are submitting these written comments for your consideration. We would like to address the following issue in particular listed in the enclosure from your November 19, 2004 letter:

Definition of maximum extent practicable, best available technology, and best conventional technology

At this point, we have seen the regulated community in California diligently establish and enforce:

1. The quantity of water (volume or flow) to be treated by a post-construction BMP for new and re-development.

2. The size of development or redevelopment project that would require the use of a post-construction BMP.

We have not seen the regulated community consistently establish:

a. The pollutant removal performance required for the post-construction BMP.

12021-B NE Airport Way, Portland, OR 97220 800.548.4667 800.561.1271 stormwaterinc.com

re-development projects. It will assist manufacturers by giving us a goal to design to achieve pollutant removals It will provide an even basis for competition. Finally, it will give much greater confidence that investments in BMPs will measurably improve water quality.

We are available to assist staff, should you have any questions or wish to discuss any issues. Our Senior Regional Manager in California, Mr. Richard Haimann, P.E., is a highly qualified water treatment professional with over 15 years of consulting experience to industry and government. He is available to assist you and can be reached at (714) 465-3157. Additionally, our Vice President of Research and Development, Mr. Jim Lenhart, P.E., has spent more than 20 years working professionally in the arena of stormwater quality and has deep intrinsic knowledge of the stormwater quality science and engineering. He can be reached at (800) 548-4667. Please don't hesitate to contact us with any questions.

Sincerely,

Richard G. Haimann

Richard Haimann, P.E.
Senior Regional Manager

SWRCB Development of a Draft Policy for Implementation of the Storm Water Program

Commander, Navy Region Southwest
Issues for Discussion at Public Meetings (Jan 12, 18, and 21)

Specific Issues to Discuss

1. Toxicity Standards for Storm Water Discharges

There is no statewide protocol for developing and implementing toxicity standards for storm water discharges. The lack of protocols/guidance has contributed to an inconsistent application of toxicity standards amongst the nine Regional Boards. In some cases the inconsistency is even evident within a particular Regional Board. For example, Region IX has written various NPDES Permits with acute toxicity standards for storm water discharges. The permits include standards with survival requirements that vary from 90% survivability to 70% survivability, to permits with no acute toxicity standards. This inconsistent application of toxicity standards is for permits regulating storm water discharges into the same water body.

Without statewide policy requiring the use of scientifically based protocols to develop toxicity standards, Regional Board staff may take significantly different approaches when developing standards for NPDES permits, including approaches that do not rely on science. For example, Region IX used the 90% survival standard from the *1974 Water Quality Control Policy for the Enclosed Bays and Estuaries of California* when developing a storm water discharge toxicity standard that has been included in several NPDES permits. Although this policy was clearly never intended to apply to storm water discharges, the Regional Board staff included the standard in permits without providing any scientific rationale on why the standard is appropriate for storm water discharges. The implementation of standards that are not scientifically based will either lead to permits that do not adequately protect water quality or permits that are overly protective and very costly to implement.

For those Regional Boards that include toxicity standards for storm water discharges in an NPDES permit, they should be following a statewide policy with scientifically based protocols for developing toxicity standards. This would ensure a consistent, scientifically based, approach is applied statewide.

2. Inconsistent Implementation of First Flush Discharge Prohibitions

NPDES permit requirements prohibiting the first flush of storm water discharges are inconsistently applied by the nine Regional Boards and in some cases even within a particular Region. For example, Region IX has written several NPDES Permits that include standards prohibiting the discharge of the first flush of storm water runoff from "High Risk" operations. The definition of a "High Risk" operation varies depending on the permit holder, even amongst permit holders that conduct similar operations such as boat yards and ship yards. In addition to an inconsistent definition of "High Risk" being used, the permits vary on how much storm water is considered the first flush. Depending on the permit issued by Region IX, the first flush varies from 0.1 inch to 1.0 inch of precipitation and some permits did not include any prohibition on first flush discharges. No scientific basis has been provided for the differences in first flush

volumes or the lack of a prohibition in other permits. This inconsistent approach to storm water diversion has been applied in permits regulating industrial storm water discharges into the same body of water.

The state wide policy should include scientifically based protocols that the Regional Boards must utilize when developing standards that include first flush discharge prohibitions. These protocols could consider such variables as runoff coefficient, infiltration, size of drainage basin, estimated pollutant loading based on historical sampling data, etc.

3. Monitoring Requirements Should Measure True Impacts

Monitoring requirements should rely on measuring parameters that represent the true impact of the discharged contaminants to beneficial uses. For example, monitoring requirements for aquatic toxicity of storm water effluent should be correlated to a measurable impact on aquatic life in the subject water body.

The statewide policy should include a requirement for the Regional Boards to develop monitoring requirements that measure impacts to beneficial uses and move the monitoring program away from traditional end of pipe monitoring. This change would ensure discharges are not causing or contributing to exceedance of water quality standards in receiving waters.

4. Recognize Intermittent Conditions in Storm Water Discharges

One of the reasons US EPA recommends the use of BMPs in lieu of effluent limitations for storm water permits is the difficulty in calculating numeric effluent limitations for the widely variable flows associated with storm water and the difficulties in monitoring such intermittent discharges. If SWRCB decides numerical standards should be used to determine compliance for specific contaminants, those numerical standards should be developed based on storm water or wet weather conditions (intermittent effluent) rather than conditions assuming a continuous flow of effluent within a consistent range of volume.

Other Issues to Consider for Policy

- Use of benchmarks/ trends in pollution loading to assess permittee programs. How naturally occurring background and pollutants from off-site sources should be consider when comparing results to benchmarks.

- Implementation of a watershed pollutant credit-trading program.

- Relationship of the storm water program to other water quality programs such as TMDLs.

- Use of pollutant load reductions as a means of determining permit compliance

- Cross-boundary problems (where a permittee's property crosses into two or more Regional Board jurisdictions. These situations cause a permittee two or more storm water programs for one activity.

From: "Bruce Ambo" <BAmbo@morro-bay.ca.us>
To: <jmu@waterboards.ca.gov>
Date: 1/6/05 5:11PM
Subject: Comments on the State Storm Water Program Policies

Dear Ms. Mu,

On behalf of the City of Morro Bay I would like to express our concerns with the development of State policies on the storm water program. These policies have far reaching impacts on daily operations and permitting requirements that particularly affect small communities with limited financial resources. In effect these programs are unfunded mandates that place an even heavier maintenance and reporting burden on small community's. We request that this policy analysis process be broadened to evaluate the financial impact and implications for small communities such as ours. We also question whether standards and requirements that have been suggested or required through various permitting processes have indeed been formally adopted or even changed.

Please provide the results of these statewide meetings (or make them available) and any other information that may relate to the development of the program. We look forward to participating in the development of these policies to the extent that our limited resources allow.

If you have any questions or would like additional information, please feel free to contact me.

Sincerely,

Bruce Ambo, AICP
Public Services Director
City of Morro Bay
955 Shasta Ave.
Morro Bay, CA 93442
805/772-6215
Fax 805/772-6268
BAmbo@Morro-Bay.ca.us

CC: <jfalcone@co.slo.ca.us>, "Bob Hendrix" <BHendrix@morro-bay.ca.us>, "David Phillips" <DPhillips@morro-bay.ca.us>, <mbwwtp@yahoo.com>

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENVIRONMENTAL ANALYSIS, MS 27
1120 N STREET
P. O. BOX 942874
SACRAMENTO, CA 94274-0001
PHONE (916) 653-7507
FAX (916) 653-7757
TTY (916) 653-4086

Flex your power!
Be energy efficient!

January 10, 2005

Tom Filler
Storm Water Section
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

e-mail address: tfiller@waterboards.ca.gov

Subject: Policy for the Implementation of the Storm Water Program

Dear Mr. Filler:

I appreciate the opportunity to submit comments prior to the listening sessions on the proposed *Policy for the Implementation of the Storm Water Program.* As stated in the public notice, this Policy will be used for the development of NPDES storm water permits, evaluation of permit compliance, and assessment of the effectiveness of storm water management plans. The notice solicited comments on the listed topics, other topics, and the appropriate approach for addressing the issues.

As you know, a major goal of the Department of Transportation (Department), as the purveyor of the state's highway system, is to provide seamless integration of storm water protection into our projects and activities. I look forward to the development of the Policy as a means for potentially resolving many of the issues that have arisen during development and negotiation of the Department's Storm Water Management Plan. A statewide Policy is desirable, as it can ensure consistency, practicality, and fairness in the application of storm water regulation in California.

The Department's detailed comments are enclosed. We hope that you will find these comments to be helpful. If you have any questions, please contact Mike Rogers at (916) 653-3738.

Sincerely,

MICHAEL FLAKE, Chief
Storm Water Policy

Enclosure

Comments to be Considered During Preparation of the Policy for the Implementation of the Storm Water Program

Prepared by the California Department of Transportation (Caltrans)
Division of Environmental Analysis
Contact: Mike Rogers
MS-27, P.O. Box 942874, Sacramento, CA 94274-0001 (1120 N Street)
E-mail: Mike_Rogers@dot.ca.gov

Submitted to: Tom Filler
Storm Water Section, Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100E-mail address: tfiller@waterboards.ca.gov

DATE: January 10, 2005

a. Relationship of the storm water program to other water quality programs such as Total Maximum Daily Loads, 401 Certification, or groundwater protection requirements.

We consider each of the following items as important topics to be addressed by the Policy. In addition, we proposed two more issues for this category: ASBS and primary pollution sources.

- Relationship to TMDLs – TMDLs are increasingly becoming the primary basis for improvements in storm water controls. Several TMDL issues affect storm water. One is that TMDL allocations assigned to storm water become, in effect, numeric limits, which have been previously considered by the regulatory agencies as inappropriate for storm water.

  A second issue is the need to identify and assess the program implications of the aggregate impact of all the TMDLs likely to be implemented for individual waterways. Storm water dischargers review and comment on the individual TMDLs as they are developed, but there is no process to review and assess the aggregate impact of the TMDLs (i.e., once all TMDLs are adopted what controls will be needed? Could there be conflicts?). This overall assessment is important early in the process in order to ensure that the level of treatment will be compatible with all TMDLs. An overall assessment can also help determine whether the proposed TMDLs and associated controls are financially feasible, cost beneficial, and practical for the public institutions, that will need to fund their implementation.

- Relationship of the storm water program to 401 Certification – Some Regional Boards have used the CWA 401 Certification Process to address storm water issues. The CWA 401 certification is intended to address the water quality issues related to CWA 404 Dredge and Fill permits. Use of the 401 Certification in these

situations to address storm water runoff encroaches upon the responsibility of the NPDES storm water permit (CWA Section 402), which is already in place to address these discharges. The Policy should clearly delineate the relative authority of the 404/401 permit/certification processes and the 402 (NPDES) permit.

- Relationship of the storm water program to groundwater protection requirements – Infiltration of storm water is currently viewed as a major treatment control option for storm water discharges to surface waters. For example, the cost estimates for the LA River and Ballona Creek metals TMDLs assume that 20% of the two watersheds would be treated by use of infiltration trenches. The Policy will need to address how storm water programs that allow this type of treatment are also in compliance with the Basin Plan standards to protect groundwater. Storm water discharges typically contain constituents that exceed the groundwater standards listed in the various Basin Plans. A related issue is Resolution No. 68-16, Policy with Respect to Maintaining High Quality Waters of the State, which requires the Regional Boards to maintain existing high quality waters of the state (i.e., background water quality) with limited exceptions.

  A key issue for storm water infiltration and related disposal programs is the Point of Compliance (i.e., the location in the groundwater at which the standards are applied). The Policy for Application of Water Quality Objectives contained in at least one Basin Plan states that "...Water quality objectives apply to all waters within a surface water or groundwater resource for which beneficial uses have been designated, rather than at an intake, wellhead, or other point of consumption." In effect, this appears to mean that those infiltrating water or otherwise discharging to the groundwater cannot take advantage of the natural attenuation that occurs before the water is extracted. Some particulate pollutants will clearly be filtered out, but dissolved constituents can also be expected to be attenuated.

  A related question concerns federal requirements under the Safe Drinking Water Act, which apply to certain infiltration wells. These federal requirements should be addressed, or at least mentioned, in conjunction with the requirements contained in the Basin Plans.

- Need to address storm water discharges to ASBS (new issue) – The Board has sent letters to all dischargers to Areas of Special Biological Significance (ASBS) along the Pacific coastline instructing them to either cease the (storm water) discharge or apply for an exception to the Ocean Plan. It is our understanding that at least one Regional Board is considering issuing Cease and Desist Orders in the very near future to several communities to ban the discharges. This recent initiative to ban storm water or require expensive monitoring (and likely enhanced treatment) will have a major cost impact on coastal cities, the Department, parks, and others with coastal facilities. The Policy should address these issues and help establish a reasonable control program based on the relative inherent risk of storm water discharges in rural coastal areas.

- Need to address primary pollution sources, which may be regulated by other programs (new issue) – Aerial deposition is sometimes a significant source of pollutants in runoff. Similarly, many of the most problematic pollutants in roadway runoff are derived from cars (copper from brakes; zinc from tires). These pollutants could in at least some cases be more cost-effectively addressed by control efforts targeting the primary sources. Using available non-copper brake linings, for example, could result in less cost to the public than the construction of controls to remove copper from storm water. A Policy that identifies such sources of pollution and establishes the industry, the SWRCB, RWQCBs, other regulatory bodies (e.g., ARB) and the legislature as stakeholders to address the reduction of these sources would be preferable to the mandatory treatment controls for storm water throughout the state.

b. Monitoring issues

- Chemical, biological, hydrological, and/or physical monitoring – Characterization monitoring is important, but is expensive and should not be required once runoff characteristics are established.

- Use of monitoring to determine compliance with permit requirements – Costs for sampling and analysis of runoff occurring throughout the state, as well as the high degree of variability in monitoring results, make it impractical to require compliance monitoring for storm water. When deemed necessary for special environmentally sensitive areas, monitoring requirements should be limited to bioassessments, such as the Bioassessment Monitoring Program being developed by the Stormwater Monitoring Coalition of Southern California. This approach is considered cost effective and practical.

- Use of benchmarks/trends in pollution loading to assess permittees' programs – In some cases benchmarks may be appropriate, however the benchmarks developed by EPA for storm water are unrealistic in that normal storm water loads (less than 100 mg/l TSS) of native soils will typically exceed the benchmarks for some constituents (aluminum, iron).

c. Compliance issues

Storm water policy should establish standards that can be met. Currently, virtually every discharge of storm water from urban areas exceeds standards at the point of discharge (i.e., end-of-pipe). These problem pollutants include bacteria (used a indicator of pathogens), copper, lead, zinc, and dioxin.

At the point of discharge, storm water containing these pollutants does not comply with water quality standards. In ephemeral streams, storm water discharges may cause the entire waterway to intermittently exceed standards. Nevertheless, storm water permits typically include the following requirement:

"Discharges shall not cause or contribute to an exceedance of water quality standards
contained in a Statewide Water Quality Control Plan, the California Toxics Rule (CTR),
or in the applicable RWQCB Basin Plan...", and:

"...The SWMP shall be designed to achieve compliance with Receiving Water Limitations..."

The SWRCB and have never defined what is meant by "exceedance of water quality standards". Is it end-of-pipe measurements? Are mixing zones to be considered, as allowed in some Basin Plans? Is exceedance to be determined by measurement in the receiving water? The SWRCB, as well as EPA, has been silent on these issues. This places dischargers in a gray area with respect to compliance. They are required to design their SWMPs to achieve compliance with WQS and they are required to take specific steps when they have an exceedance. However, there is no guidance on what these key compliance terms mean with respect to storm water.

The basic problem is that the standard approaches for assessing discharge compliance, such as those in EPA's Technical Support Document for Water Quality-based Toxics Control (No. 440485032; 1985), will place many, if not most, urban storm water discharges in non-compliance.

Recent court decisions at both the federal and state level have confirmed that municipal storm water discharges must comply with MEP pollutant removal, but are not required by the Clean Water Act to comply with WQS. The requirement for compliance with WQS is a discretionary decision by the State. Since municipal storm water compliance with WQS is discretionary, the Policy should develop a compliance approach that realistically takes into account that some constituents typically present in urban storm water are most practically addressed by coordinated source reduction efforts rather than through the implementation of treatment controls.

- Methods/standards to be used by the Regional Boards to assess compliance – See discussion above.

- Definition of maximum extent practicable, best available technology, and best conventional technology – Currently, the State's interpretation of MEP apparently relies on a memo prepared by the Office of Chief Counsel[1]. This memo specifies:

  "To achieve the MEP standard, municipalities must employ whatever Best Management Practices (BMPs) are technically feasible (i.e., are likely to be effective) and are not cost prohibitive.

The suggested factors, in part, include:

"c. Public Acceptance: Does the BMP have public support?

[1] "Definition of Maximum Extent Practicable," Elizabeth Jennings, Senior Staff Counsel, February 11, 1993.

d. Cost: Will the cost of implementing the BMP have a reasonable relationship to the pollution control benefits to be achieved?"

Unfortunately, the key issues of comparing benefits and costs, as well as what is meant by public support have not been further defined. The proposed Policy development should address these issues.

The memo also concludes:

"The final determination regarding whether a municipality has reduced pollutants to the maximum extent practicable can only be made by the Regional or State Water Boards, and not by the municipal discharger

Compliance is achieved on the basis of a subjective decision by Regional Board staff, not upon established criteria. In other discharge situations (e.g., POTWs, industrial discharges), the permittee knows clearly whether or not they are in compliance. The current policy places storm water permittees perpetually "in the dark" concerning their compliance status and subject to possibly differing and inconsistent judgments by local Regional Boards and their staff. As with other permittees, storm water dischargers should have clear compliance requirements that can be judged not only by the permittees themselves and the regulators, but also by the public and other parties (esp. other similar dischargers).

BCT (best conventional pollutant control technology) applies to the conventional pollutants: biochemical oxygen demand (BOD5), total suspended solids (TSS), pH, fecal coliform and oil and grease. As specified in the federal regulations, BCT is based on the typical performance at sewage treatment plants.

BAT (best available technology economically achievable) pertains to certain toxic pollutants, non-conventional pollutants, and thermal pollution.

BCT and BAT are typically defined by federal "effluent limitations guidelines", which have not been promulgated for storm water. In the absence of these guidelines, the permit writer is supposed to follow the criteria specified in the federal regulations for identifying BCT/BAT. It is not clear whether this process of assessing the criteria has been completed during the development of the permit for construction discharges in California. This Policy presents an opportunity to bring the permit process into compliance with the federal requirements.

- Necessary time to allow a permittee to put in place and implement a program – The permits obviously need to address the reality of municipal and state funding processes and the necessary time period to implement new programs.

- Necessary time to allow a program to show results – As noted above, reasonable implementation periods should be allowed.

- Development of load reductions to be used as a means of determining permit compliance – Load reductions will be increasingly common as TMDLs are implemented. It is not clear that an additional load reduction effort is needed.

d. Standards issues

- Use of quantitative parameters (chemical or toxicity) to measure compliance – See previous discussion on compliance.

- Application of Water Quality Standards to storm water in wet weather conditions - See previous discussion on compliance.

e. Permitting issues

- Consistency among Regional Boards – This is a key need and rational for this Policy. We assume that the Policy would establish a consistent statewide approach acceptable to all RWQCBs.

- Cross-boundary problems (multiple Boards have jurisdiction over one permittee) – Development of Board-to-Board consistency should help address many of the cross-boundary problems.

- Consistency between Phase I and Phase II requirements – It is not evident that this is an important topic at this juncture; however, we do support a process that eventual brings phase II entities to a level of application and compliance that is equal to that being achieved by phase I entities.

f. Other Issues (new issues)

- Requirements for treatment controls in non-urban areas (new issue) – The CWA storm water requirements pertain to urban areas. Is does not seem appropriate to extend these requirements to non-urban locations.

Extent of SUSMP-type requirements – Post-construction controls are applied very differently from Regional Board to Region Board. A clear definition of these requirements and a consistent approach is needed. The appropriateness of off-site compensatory mitigation is a related issue. Post-construction control requirements should recognize differences between municipal and other operations that are regulated as MS4s. For example, the linear and constrained nature of the Department's highway right-of-ways makes some BMPs difficult and redundant to implement within other MS4s.

- Integration of requirements from other permits – From an institutional and administrative standpoint, it may be beneficial for municipal permittees to have a single document that addresses their wastewater program. This document

(Wastewater Management Plan) could address not only storm water, but also dewatering permits (where these are separate), 404/401 requirements, the industrial permit, EPA requirements for injection wells, WDRs for discharge to land, etc.). The Policy should describe how this approach could be used if beneficial to permittees.

- Other issues important to the Department include; site inspection protocols, consistency in the regulation of de-icing activities, and determination of the 70% stabilization item in the Construction Permit. These issues were previously brought to your attention during the last permit period or during negotiations of our current permit renewal.

Costs and Benefits. Municipal Permittees have been pelted by mixed regulatory, judicial, and advocate signals, making it impossible to develop a comprehensive plan to address stormwater quality. In an August 2002 study of Permittee Budgets, the LARWQCB cited an EPA projection that stormwater protection costs should be about $10 per household-year, however, our permittees already spend 5-6 times this amount, with nearly no consideration of TMDL costs. Residents of one local jurisdiction recently adopted a supplemental half-billion dollar bond initiative, increasing average stormwater program costs by over $35 per household-year, which would only address the first round of TMDL costs. A 2002 University of Southern California (USC) study had scenarios with 20-year local cost estimates of over $40,000 per household to meet CTR standards. Clearly a significant and overwhelming divergence of professional opinions exist. Given continuing statewide fiscal constraints, the Water Board should formulate a policy that shifts the discussion from one of "How clean is clean?" or "How much should be spent?", to "What is the most cost efficient water quality measures for this watershed?"

Focus on Improving Existing Programs. Neither the Water Boards nor local agencies have reviewed the efficacy of existing NPDES Permits activities and agency staff need to devise a constructive approach to reviewing the outstanding MS4 Permits and TMDL implementation plans issues to insure that water quality improvements are resulting from our actions. There also needs to be a mechanism for evaluating self-reported monitoring data from the General Construction and Industrial Stormwater Permits. The State Policy should focus on making more cost-effective use of these existing program elements.

Planning Document Review. We believe that most or all of the state Basin Plans suffer from similar deficiencies as the Los Angeles Plan. In the February 2003 study by Dr. Paulson (*A Review of the Los Angeles Basin Plan Administrative Record*), she noted that "When the RWQCB initially established water quality objectives in the mid 1970s, it explicitly did not intend those objectives to be applied to nonpoint sources (including stormwater and urban and rural runoff)." State stormwater policy should require that all Basin Plans explicitly include drainage management as a beneficial use and recognize the benefits that accrue from effluent dependent streams in watercourses that would otherwise be dry stream beds for much of the year. These evaluations must consider Porter-Cologne Sections 13241 and 13242 public interest factors, which require that public resources be expended in a manner that optimizes water quality protection.

CTR and Toxics SIP. The California Toxics Rule (Federal Register Vol 65, No. 97, May 18, 2000) was identified as being applicable to industries and public owned treatment works (POTWs) discharging to surface waters. However proposed TMDLs apply CTR standards to pollutants associated with aerial deposition and essentially forces regulators and municipalities to consider private residences, parks and natural areas of the watershed in the same regulatory light as industries and POTWs. The State Toxics Standards Implementation Plan (SIP) should continue to exclude stormwater discharges and distinguish between point and non point pollutant discharge sources. The proposed State stormwater policy should explicitly indicate that non-point discharge sources, including stormwater runoff, be regulated through an iterative approach of source identification and control that focuses on cost-effective and watershed specific controls.

Cross Media Pollutants. Recently proposed TMDLs have suggested that Permittees take responsibility for legislation to change the formulation of automobile brake pads to reduce aerial deposition of metals. While municipalities are likely to support legislation that benefits our water quality control efforts, State Stormwater policy should explicitly assign these responsibilities to the regulatory community, which has the technical competency to persuade the legislature regardint the importance of these issues. Furthermore, the Governor should direct that the Cabinet Secretary work to prevent conflicting state agency policy development which has led to MTBE in groundwater, pesticides in runoff and water standards that focus on dispersed air pollutants.

Intra-agency Consistency. The State stormwater management policy should shift away from the current point source model of regulation, which has led to increasingly bitter inter-agency tension, and emphasize the iterative Maximum Extent Practical (MEP) approach conceived in the Clean Water Act. This would acknowledge the significant progress that has been achieved and allow local programs to catch up with existing regulations. Hundreds of LA County businesses, which are ignored in other parts of the state, are being inspected for potential polluted discharges, but no mechanism exists to correct Board permitted discharges in excess the CTR. Thousands of structural BMPs are installed annually in Los Angeles County, but we do not know their efficacy. Standard Urban Stormwater Mitigation Plans (SUSMP) are submitted daily, but few reduce runoff. Despite challenges and tight fiscal constraints, Permittees deserve credit for implementing effective water quality control programs as reported in the 2003-2004 MS4 Permittees Annual Report (http://ladpw.org/wmd/npdes/ar/annualreport/). Various monitoring data and biological indices indicate that discharge and receiving water quality is continuing to improve annually and we believe that this is significantly attributable to the efforts of our Permittees. However, a more consistent state stormwater policy that emphasizes agency cooperation and finding cost effective solutions to the significant remaining discharge challenges would reduce the current level of conflict and encourage municipalities to focus on achieving additional water quality improvements, despite continuing constraints on state and local resources.

If you wish to further discuss the issues in this letter, or seek input from the EAC on our combined efforts at improving regional quality, please contact me at 562-904-7102.

Sincerely,

Desi Alvarez, P.E.
Chair, Executive Advisory Committee

11/23/04	Perry Beck, Town of Loomis
11/23/04	Leslie Gault, Placer County
1/3/05	Jim Scanlin, ACPWA
1/4/05	Roger James
1/5/05	Cathy Parker, Parker West International
1/5/05	Rokni Development Co.
1/6/05	Coalition for Practical Regulation (CPR) (I have a hard copy on their letterhead)
1/6/05	Coalition for Adequate School Housing
1/6/05	Stormwater Management Inc.
1/6/05	Commander, Navy Region Southwest
1/6/05	Bruce Ambo, City of Moro Bay
1/7/05	City of Monrovia
1/10/05	Executive Advisory Committee, Stormwater Program – County of Los Angeles
1/10/05	Caltrans
(undate)	Riverside Flood Control District
1/13/05	James Cowan, City of Alhambra
Hardcopy only	
(undated)	L.A. County Office of Education
1/11/05	L.A. Unified School District
1/11/05	Environmental Compliance Services

Executive Advisory Committee
Stormwater Program – County of Los Angeles

January 10, 2005

Art Baggett Jr.
Chair, State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Comments Regarding Storm Water Program Implementation Policies

Dear Mr. Baggett:

The Executive Advisory Committee (EAC) supports the interests of the 85 Los Angeles County municipal permittees, whom are regulated under the two Los Angeles Regional Water Quality Control Board (LARWQCB) National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permits. The EAC representatives acknowledge and commend the State Water Resources Control Board (SWRCB) for scheduling Stormwater Policy Listening Sessions statewide and especially appreciate your hosting of the January 12, 2005 meeting in our region. Allowing the local agency representatives to share our viewpoints and air our differences, has the potential to help reduce the interagency tension that accompanies new, under-supported regulatory programs of this exceptionally comprehensive magnitude.

Introduction. Federal, state, and local agencies each share the goal of achieving a wide assemblage of sustainable beneficial uses in local receiving waters. Unfortunately, our shared goal is often clouded by differing opinions regarding pollutant sources, control methods, costs, sustainable loadings, implementation strategies, and how to satisfy competing beneficial uses. Stormwater runoff management aggravates interagency and beneficial use conflicts, requiring the State Water Boards to judicially select from among the various options, which can be found on the regulatory palette. These choices must be made to balance competing societal needs, in the same way that actions to curtail estuary-choking silt, do not eliminate the sand that supplies our beaches.

Monitoring. The continued lack of BMP effectiveness assessment hinders every aspect of the State Stormwater Program and currently most agencies can only assert that urban runoff water quality appears to be improving. Both local and state agencies have limited supporting information upon which to direct development and pollution control efforts. This results in TMDLs that recommend devices (vortex trash control) that are expensive to install and acerbate other pollutants (bacteria) or TMDL implementation plans that ignore the differing toxicity of dissolved and particulate pollutant fractions. Planners and engineers, in both the public and private sector, have an infantile knowledge base, upon which to make their decisions, resulting in a default design consideration based on "least-cost" rather than "cost-effectiveness". State stormwater policy should focus on achieving benchmark goals, at modest expense, while continuing to develop the knowledge necessary to achieve desired water quality standards for typical source categories.

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENVIRONMENTAL ANALYSIS, MS 27
1120 N STREET
P. O. BOX 942874
SACRAMENTO, CA 94274-0001
PHONE (916) 653-7507
FAX (916) 653-7757
TTY (916) 653-4086

Flex your power!
Be energy efficient!

January 10, 2005

Tom Filler
Storm Water Section
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

e-mail address: tfiller@waterboards.ca.gov

Subject: Policy for the Implementation of the Storm Water Program

Dear Mr. Filler:

I appreciate the opportunity to submit comments prior to the listening sessions on the proposed *Policy for the Implementation of the Storm Water Program.* As stated in the public notice, this Policy will be used for the development of NPDES storm water permits, evaluation of permit compliance, and assessment of the effectiveness of storm water management plans. The notice solicited comments on the listed topics, other topics, and the appropriate approach for addressing the issues.

As you know, a major goal of the Department of Transportation (Department), as the purveyor of the state's highway system, is to provide seamless integration of storm water protection into our projects and activities. I look forward to the development of the Policy as a means for potentially resolving many of the issues that have arisen during development and negotiation of the Department's Storm Water Management Plan. A statewide Policy is desirable, as it can ensure consistency, practicality, and fairness in the application of storm water regulation in California.

The Department's detailed comments are enclosed. We hope that you will find these comments to be helpful. If you have any questions, please contact Mike Rogers at (916) 653-3738.

Sincerely,

MICHAEL FLAKE, Chief
Storm Water Policy

Enclosure

Comments to be Considered During Preparation of the Policy for the Implementation of the Storm Water Program

Prepared by the California Department of Transportation (Caltrans)
Division of Environmental Analysis
Contact: Mike Rogers
MS-27, P.O. Box 942874, Sacramento, CA 94274-0001 (1120 N Street)
E-mail: Mike_Rogers@dot.ca.gov

Submitted to: Tom Filler
Storm Water Section, Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100E-mail address: tfiller@waterboards.ca.gov

DATE: January 10, 2005

a. Relationship of the storm water program to other water quality programs such as Total Maximum Daily Loads, 401 Certification, or groundwater protection requirements.

We consider each of the following items as important topics to be addressed by the Policy. In addition, we proposed two more issues for this category: ASBS and primary pollution sources.

- Relationship to TMDLs – TMDLs are increasingly becoming the primary basis for improvements in storm water controls. Several TMDL issues affect storm water. One is that TMDL allocations assigned to storm water become, in effect, numeric limits, which have been previously considered by the regulatory agencies as inappropriate for storm water.

  A second issue is the need to identify and assess the program implications of the aggregate impact of all the TMDLs likely to be implemented for individual waterways. Storm water dischargers review and comment on the individual TMDLs as they are developed, but there is no process to review and assess the aggregate impact of the TMDLs (i.e., once all TMDLs are adopted what controls will be needed? Could there be conflicts?). This overall assessment is important early in the process in order to ensure that the level of treatment will be compatible with all TMDLs. An overall assessment can also help determine whether the proposed TMDLs and associated controls are financially feasible, cost beneficial, and practical for the public institutions, that will need to fund their implementation.

- Relationship of the storm water program to 401 Certification – Some Regional Boards have used the CWA 401 Certification Process to address storm water issues. The CWA 401 certification is intended to address the water quality issues related to CWA 404 Dredge and Fill permits. Use of the 401 Certification in these

situations to address storm water runoff encroaches upon the responsibility of the NPDES storm water permit (CWA Section 402), which is already in place to address these discharges. The Policy should clearly delineate the relative authority of the 404/401 permit/certification processes and the 402 (NPDES) permit.

- Relationship of the storm water program to groundwater protection requirements – Infiltration of storm water is currently viewed as a major treatment control option for storm water discharges to surface waters. For example, the cost estimates for the LA River and Ballona Creek metals TMDLs assume that 20% of the two watersheds would be treated by use of infiltration trenches. The Policy will need to address how storm water programs that allow this type of treatment are also in compliance with the Basin Plan standards to protect groundwater. Storm water discharges typically contain constituents that exceed the groundwater standards listed in the various Basin Plans. A related issue is Resolution No. 68-16, Policy with Respect to Maintaining High Quality Waters of the State, which requires the Regional Boards to maintain existing high quality waters of the state (i.e., background water quality) with limited exceptions.

  A key issue for storm water infiltration and related disposal programs is the Point of Compliance (i.e., the location in the groundwater at which the standards are applied). The Policy for Application of Water Quality Objectives contained in at least one Basin Plan states that "...Water quality objectives apply to all waters within a surface water or groundwater resource for which beneficial uses have been designated, rather than at an intake, wellhead, or other point of consumption." In effect, this appears to mean that those infiltrating water or otherwise discharging to the groundwater cannot take advantage of the natural attenuation that occurs before the water is extracted. Some particulate pollutants will clearly be filtered out, but dissolved constituents can also be expected to be attenuated.

  A related question concerns federal requirements under the Safe Drinking Water Act, which apply to certain infiltration wells. These federal requirements should be addressed, or at least mentioned, in conjunction with the requirements contained in the Basin Plans.

- Need to address storm water discharges to ASBS (new issue) – The Board has sent letters to all dischargers to Areas of Special Biological Significance (ASBS) along the Pacific coastline instructing them to either cease the (storm water) discharge or apply for an exception to the Ocean Plan. It is our understanding that at least one Regional Board is considering issuing Cease and Desist Orders in the very near future to several communities to ban the discharges. This recent initiative to ban storm water or require expensive monitoring (and likely enhanced treatment) will have a major cost impact on coastal cities, the Department, parks, and others with coastal facilities. The Policy should address these issues and help establish a reasonable control program based on the relative inherent risk of storm water discharges in rural coastal areas.

- Need to address primary pollution sources, which may be regulated by other programs (new issue) – Aerial deposition is sometimes a significant source of pollutants in runoff. Similarly, many of the most problematic pollutants in roadway runoff are derived from cars (copper from brakes; zinc from tires). These pollutants could in at least some cases be more cost-effectively addressed by control efforts targeting the primary sources. Using available non-copper brake linings, for example, could result in less cost to the public than the construction of controls to remove copper from storm water. A Policy that identifies such sources of pollution and establishes the industry, the SWRCB, RWQCBs, other regulatory bodies (e.g., ARB) and the legislature as stakeholders to address the reduction of these sources would be preferable to the mandatory treatment controls for storm water throughout the state.

b. Monitoring issues

- Chemical, biological, hydrological, and/or physical monitoring – Characterization monitoring is important, but is expensive and should not be required once runoff characteristics are established.

- Use of monitoring to determine compliance with permit requirements – Costs for sampling and analysis of runoff occurring throughout the state, as well as the high degree of variability in monitoring results, make it impractical to require compliance monitoring for storm water. When deemed necessary for special environmentally sensitive areas, monitoring requirements should be limited to bioassessments, such as the Bioassessment Monitoring Program being developed by the Stormwater Monitoring Coalition of Southern California. This approach is considered cost effective and practical.

- Use of benchmarks/trends in pollution loading to assess permittees' programs – In some cases benchmarks may be appropriate, however the benchmarks developed by EPA for storm water are unrealistic in that normal storm water loads (less than 100 mg/l TSS) of native soils will typically exceed the benchmarks for some constituents (aluminum, iron).

c. Compliance issues

Storm water policy should establish standards that can be met. Currently, virtually every discharge of storm water from urban areas exceeds standards at the point of discharge (i.e., end-of-pipe). These problem pollutants include bacteria (used a indicator of pathogens), copper, lead, zinc, and dioxin.

At the point of discharge, storm water containing these pollutants does not comply with water quality standards. In ephemeral streams, storm water discharges may cause the entire waterway to intermittently exceed standards. Nevertheless, storm water permits typically include the following requirement:

"Discharges shall not cause or contribute to an exceedance of water quality standards
contained in a Statewide Water Quality Control Plan, the California Toxics Rule (CTR),
or in the applicable RWQCB Basin Plan...", and:

"...The SWMP shall be designed to achieve compliance with Receiving Water Limitations..."

The SWRCB and have never defined what is meant by "exceedance of water quality standards". Is it end-of-pipe measurements? Are mixing zones to be considered, as allowed in some Basin Plans? Is exceedance to be determined by measurement in the receiving water? The SWRCB, as well as EPA, has been silent on these issues. This places dischargers in a gray area with respect to compliance. They are required to design their SWMPs to achieve compliance with WQS and they are required to take specific steps when they have an exceedance. However, there is no guidance on what these key compliance terms mean with respect to storm water.

The basic problem is that the standard approaches for assessing discharge compliance, such as those in EPA's Technical Support Document for Water Quality-based Toxics Control (No. 440485032; 1985), will place many, if not most, urban storm water discharges in non-compliance.

Recent court decisions at both the federal and state level have confirmed that municipal storm water discharges must comply with MEP pollutant removal, but are not required by the Clean Water Act to comply with WQS. The requirement for compliance with WQS is a discretionary decision by the State. Since municipal storm water compliance with WQS is discretionary, the Policy should develop a compliance approach that realistically takes into account that some constituents typically present in urban storm water are most practically addressed by coordinated source reduction efforts rather than through the implementation of treatment controls.

- Methods/standards to be used by the Regional Boards to assess compliance – See discussion above.

- Definition of maximum extent practicable, best available technology, and best conventional technology – Currently, the State's interpretation of MEP apparently relies on a memo prepared by the Office of Chief Counsel[1]. This memo specifies:

  "To achieve the MEP standard, municipalities must employ whatever Best Management Practices (BMPs) are technically feasible (i.e., are likely to be effective) and are not cost prohibitive.

The suggested factors, in part, include:

"c. Public Acceptance: Does the BMP have public support?

[1] "Definition of Maximum Extent Practicable," Elizabeth Jennings, Senior Staff Counsel, February 11, 1993.

d. Cost: Will the cost of implementing the BMP have a reasonable relationship to the pollution control benefits to be achieved?"

Unfortunately, the key issues of comparing benefits and costs, as well as what is meant by public support have not been further defined. The proposed Policy development should address these issues.

The memo also concludes:

"The final determination regarding whether a municipality has reduced pollutants to the maximum extent practicable can only be made by the Regional or State Water Boards, and not by the municipal discharger

Compliance is achieved on the basis of a subjective decision by Regional Board staff, not upon established criteria. In other discharge situations (e.g., POTWs, industrial discharges), the permittee knows clearly whether or not they are in compliance. The current policy places storm water permittees perpetually "in the dark" concerning their compliance status and subject to possibly differing and inconsistent judgments by local Regional Boards and their staff. As with other permittees, storm water dischargers should have clear compliance requirements that can be judged not only by the permittees themselves and the regulators, but also by the public and other parties (esp. other similar dischargers).

BCT (best conventional pollutant control technology) applies to the conventional pollutants: biochemical oxygen demand (BOD5), total suspended solids (TSS), pH, fecal coliform and oil and grease. As specified in the federal regulations, BCT is based on the typical performance at sewage treatment plants.

BAT (best available technology economically achievable) pertains to certain toxic pollutants, non-conventional pollutants, and thermal pollution.

BCT and BAT are typically defined by federal "effluent limitations guidelines", which have not been promulgated for storm water. In the absence of these guidelines, the permit writer is supposed to follow the criteria specified in the federal regulations for identifying BCT/BAT. It is not clear whether this process of assessing the criteria has been completed during the development of the permit for construction discharges in California. This Policy presents an opportunity to bring the permit process into compliance with the federal requirements.

- Necessary time to allow a permittee to put in place and implement a program – The permits obviously need to address the reality of municipal and state funding processes and the necessary time period to implement new programs.

- Necessary time to allow a program to show results – As noted above, reasonable implementation periods should be allowed.

- Development of load reductions to be used as a means of determining permit compliance – Load reductions will be increasingly common as TMDLs are implemented. It is not clear that an additional load reduction effort is needed.

d. Standards issues

- Use of quantitative parameters (chemical or toxicity) to measure compliance – See previous discussion on compliance.

- Application of Water Quality Standards to storm water in wet weather conditions - See previous discussion on compliance.

e. Permitting issues

- Consistency among Regional Boards – This is a key need and rational for this Policy. We assume that the Policy would establish a consistent statewide approach acceptable to all RWQCBs.

- Cross-boundary problems (multiple Boards have jurisdiction over one permittee) – Development of Board-to-Board consistency should help address many of the cross-boundary problems.

- Consistency between Phase I and Phase II requirements – It is not evident that this is an important topic at this juncture; however, we do support a process that eventual brings phase II entities to a level of application and compliance that is equal to that being achieved by phase I entities.

f. Other Issues (new issues)

- Requirements for treatment controls in non-urban areas (new issue) – The CWA storm water requirements pertain to urban areas. Is does not seem appropriate to extend these requirements to non-urban locations.

Extent of SUSMP-type requirements – Post-construction controls are applied very differently from Regional Board to Region Board. A clear definition of these requirements and a consistent approach is needed. The appropriateness of off-site compensatory mitigation is a related issue. Post-construction control requirements should recognize differences between municipal and other operations that are regulated as MS4s. For example, the linear and constrained nature of the Department's highway right-of-ways makes some BMPs difficult and redundant to implement within other MS4s.

- Integration of requirements from other permits – From an institutional and administrative standpoint, it may be beneficial for municipal permittees to have a single document that addresses their wastewater program. This document

(Wastewater Management Plan) could address not only storm water, but also dewatering permits (where these are separate), 404/401 requirements, the industrial permit, EPA requirements for injection wells, WDRs for discharge to land, etc.). The Policy should describe how this approach could be used if beneficial to permittees.

- Other issues important to the Department include; site inspection protocols, consistency in the regulation of de-icing activities, and determination of the 70% stabilization item in the Construction Permit. These issues were previously brought to your attention during the last permit period or during negotiations of our current permit renewal.

GOOD MORNING. MY NAME IS STEVE STUMP, AND I AM THE CHIEF OF THE REGULATORY DIVISION FOR THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT. THE DISTRICT SERVICES AN AREA OF APPROXIMATELY 2,700 SQUARE MILES WITHIN THE WESTERN PORTION OF RIVERSIDE COUNTY. THIS AREA IS TRISECTED BY THE JURISDICTIONS OF THE SAN DIEGO, SANTA ANA AND COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARDS. THE DISTRICT SERVES AS PRINCIPAL PERMITTEE TO THREE SEPARATE NPDES MS4 PERMITS ISSUED BY THE AFOREMENTIONED REGIONAL BOARDS.

THE DISTRICT AND THE COUNTY OF RIVERSIDE ARE THE ONLY MUNICIPAL PERMITTEES IN THE STATE TO HOLD THREE PHASE 1 MS4 PERMITS. BEING THE ONLY PRINCIPAL PERMITTEE IN THE STATE TO BE SUBJECT TO THREE PERMITS HAS UNIQUELY PROVIDED THE DISTRICT WITH INSIGHT INTO THE DEFICIENCIES OF THE CURRENT REGULATORY FRAMEWORK AND THE NEED FOR A STATEWIDE STORMWATER PERMITTING POLICY.

AS PRINCIPAL PERMITTEE, THE DISTRICT IS RESPONSIBLE FOR COORDINATION WITH 25 MUNICIPAL PERMITTEES AND THE THREE RWQCBS, WHICH INCLUDES ANNUAL REPORTING, DEVELOPING PROGRAM COMPLIANCE GUIDELINES AND IMPLEMENTING REGIONAL COMPLIANCE PROGRAMS INCLUDING WATER QUALITY MONITORING AND PUBLIC EDUCATION. THE COST OF APPLYING FOR, IMPLEMENTING AND ADMINISTERING THREE

PERMITS IS SIGNIFICANT. DURING THE PAST FIVE YEARS (TYPICAL PERMIT CYCLE), IT IS ESTIMATED THAT THE DISTRICT'S COST OF PREPARING TWO ADDITIONAL SETS OF REPORTING DOCUMENTS WAS NEARLY $1,000,000. IN ADDITION, THE COST OF APPLYING FOR RENEWAL OF TWO ADDITIONAL PERMITS IS ESTIMATED TO HAVE COST ANOTHER $700,000 OVER THE PAST FIVE YEARS ABOVE AND BEYOND WHAT A JURISDICTION COVERED BY A SINGLE RWQCB WOULD EXPEND. THESE ARE EXAMPLES OF COSTS INCURRED BY THE DISTRICT ALONE. THE COUNTY AND OTHER MUNICIPALITIES -ALSO INCUR SIMILAR, IF NOT MORE EXTENSIVE, FISCAL AND ADMINISTRATIVE IMPACTS FROM ADMINISTRATION OF MULTIPLE PERMITS. EXAMPLES OF COSTS AND ISSUES FOR THE PERMITTEES INCLUDE:

- **ANNUAL REPORTING TAKES FIVE MONTHS ANNUALLY.** THREE ANNUAL REPORTS, EACH VARYING TO MEET UNIQUE PERMIT REQUIREMENTS MUST BE PREPARED. THE REPORTS COST APPROXIMATELY $75,000 EACH TO PRODUCE, AND CONSIST OF APPROXIMATELY 2000 PAGES OF TEXT, MAPS AND CHARTS.
- **THE DISTRICT MUST RENEW THREE PERMITS EVERY FIVE-YEARS.** PREPARATION OF REPORTS OF WASTE DISCHARGE AND THE ASSOCIATED PERMIT RENEWAL PROCESS CAN LAST WELL OVER ONE YEAR AND COST IN EXCESS OF $350,000 EACH. THESE ADMINISTRATIVE COSTS TO PREPARE THE NECESSARY DOCUMENTS AS WELL AS DEDICATE NECESSARY STAFF, LEGAL COUNSEL, AND

CONSULTANT SERVICES DIVERT RESOURCES FROM ACTIVITIES THAT COULD DIRECTLY BENEFIT WATER QUALITY.

- **INABILITY TO DEVELOP AND ADMINISTER COST EFFECTIVE REGIONAL COMPLIANCE PROGRAMS.** EACH PERMIT REQUIRES PROGRAMS THAT VARY IN SCOPE AND SPECIFICITY AND ARE NOT COORDINATED WITH REQUIREMENTS SPECIFIED BY OTHER RWQCBS.
- **MULTIPLE PERMIT RENEWALS UNDULY BURDENS PERMITTEE CORE FUNCTIONS.** TO COMPLY WITH THREE PERMITS, THE DISTRICT AND COUNTY OF RIVERSIDE ARE REQUIRED TO MODIFY COMPLIANCE PROGRAMS THREE TIMES WITHIN A TYPICAL FIVE-YEAR PERMIT CYCLE. THIS UNDULY COMPLEX PERMIT PROGRAM DEVELOPMENT PROCESS DIVERTS STAFF AND RESOURCES FROM ACTIVITIES THAT DIRECTLY IMPROVE WATER QUALITY AND FROM THE DISTRICT'S CORE DUTIES.
- **MULTIPLE PERMITS CAN LEAD TO ECONOMIC INEQUITIES.** THE VARIANCE IN SCOPE AND SPECIFICITY BETWEEN PERMITS LEAD TO INEQUITIES WITHIN A JURISDICTION. THE PERMIT PROGRAMS TO REGULATE NEW DEVELOPMENT, EXISTING BUSINESS, AND CONSTRUCTION SITES VARY SIGNIFICANTLY. THESE VARIANCES GIVE A DEVELOPMENT OR BUSINESS ON ONE SIDE OF THE CITY AN ECONOMIC ADVANTAGE OVER DEVELOPMENTS ON THE OTHER. IF THE CITY CHOOSES TO IMPOSES THE MORE RESTRICTIVE

COMPLIANCE REQUIREMENTS REGIONALLY, THEY CAN EFFECTIVELY OVERRIDE THE OTHER RWQCB PERMIT AND IMPOSE COSTLY REQUIREMENTS THAT ARE NOT NEEDED TO MANAGE THE QUALITY OF RUNOFF FROM URBAN DEVELOPMENT IN THAT AREA.

IN ADDITION TO THE AFOREMENTIONED COMPLEXITIES ASSOCIATED WITH MULTIPLE PERMITS, THE PERMITTEES HAVE OBSERVED THE FOLLOWING DEFICIENCIES WITH THE STORMWATER PROGRAM:

- INCONSISTENCY IN REGULATION BETWEEN REGIONS;
- LACK OF DUE PROCESS FOR CONSIDERATION OF PERMIT REQUIREMENTS;
- UNEVEN UNDERSTANDING AND EXPERIENCE AMONG REGIONAL BOARD MEMBERS AND STAFF REGARDING REGULATORY REQUIREMENTS AND POLICIES;
- IMPOSITION OF ADDITIONAL COMPLIANCE REQUIREMENTS THAT DO NOT ADDRESS AN IDENTIFIED PROBLEM.
- UNWILLINGNESS TO CONSIDER IF PROPOSED COMPLIANCE REQUIREMENTS WILL PROVIDE MEANINGFUL ENVIRONMENTAL BENEFITS;
- REFUSAL TO CONSIDER ECONOMIC CONSEQUENCES OF THE PROPOSED REQUIREMENTS OR TO PRIORITIZE STORMWATER QUALITY ISSUES WITH OTHER STATE AND LOCAL PRIORITIES INCLUDING LAW ENFORCEMENT, SOCIAL PROGRAMS AND EVEN OTHER ENVIRONMENTAL PROGRAMS;

- LACK OF SOURCES TO FUND EVER EXPANDING AND COSTLY REGULATORY REQUIREMENTS. IN ADDITION TO THE IMPACT ON LOCAL RESOURCES, THESE COMPLIANCE REQUIREMENTS AFFECT LOCAL LAND USE AUTHORITIES AND ARE SIGNIFICANTLY IMPACTING THE COST AND DELIVERY OF HOUSING AND EMPLOYMENT IN RIVERSIDE COUNTY; AND

- MISUSE OF MS4 PERMITS TO ASSIGN PRIMARY RESPONSIBILITY FOR RESOLVING WATER QUALITY ISSUES. THIS "DEEP POCKET" ASSIGNMENT OF RESPONSIBILITY UNDULY BURDENS LOCAL GOVERNMENT WITH REQUIREMENTS FOR DEVELOPING AND IMPLEMENTING WATER QUALITY STUDIES AND PROGRAMS FOR WHICH THEY ARE ILL-EQUIPPED AND UNDER-FUNDED TO UNDERTAKE.

IN SUMMARY, THE DISTRICT BELIEVES THAT THE EXPANSION OF LOCAL COMPLIANCE REQUIREMENTS THROUGH NEW REGULATIONS, PERMIT PROVISIONS AND INCONSISTENT POLICIES IS INAPPROPRIATE, AND IF NOT ABATED, WILL INCREASINGLY MISALLOCATE PUBLIC AND PRIVATE RESOURCES. THIS MISALLOCATION OF POTENTIALLY MILLIONS OF DOLLARS WILL IMPACT THE COST AND DELIVERY OF HOUSING AND EMPLOYMENT IN RIVERSIDE COUNTY WITH LITTLE OR NO ENVIRONMENTAL BENEFIT.

FOR THIS REASON, THE DISTRICT SUPPORTS THE FOLLOWING CHANGES TO THE EXISTING STORMWATER PROGRAM FRAMEWORK:

- REVIEW OF STANDARDS PRIOR TO IMPLEMENTATION – ALL WATER QUALITY STANDARDS TO BE UTILIZED IN THE DEVELOPMENT OF MUNICIPAL NPDES COMPLIANCE REQUIREMENTS MUST BE REASSESSED, VERIFIED AND ADJUSTED TO THEIR APPLICATION TO STORMWATER AS NECESSARY, AND SUBJECTED TO THE ECONOMIC ANALYSIS MANDATED IN WATER CODE SECTION 13241 AND 13242 PRIOR TO IMPLEMENTATION.

- IMPROVEMENT AND IMPLEMENTATION OF SECTION 13241 AND 13242 FACTORS – FULL COST-BENEFIT ANALYSES SHOULD BE REQUIRED OF ALL BASIN PLAN DESIGNATIONS FOR BENEFICIAL USES AND WATER QUALITY OBJECTIVES. FURTHER THE PUBLIC INTEREST AND IMPACT ASSESSMENTS IDENTIFIED IN WATER CODE SECTIONS 13241 AND 13242 SHOULD BE FULLY IMPLEMENTED WHEN NEW REGULATIONS OR STANDARDS ARE PROPOSED. EVEN IN THE ABSENCE OF THESE WATER CODE SECTIONS, PRUDENT PUBLIC POLICY REQUIRES COST-BENEFIT ANALYSES.

- THE REGIONAL BOARDS SHOULD REASSUME A LEADERSHIP ROLE IN WATER QUALITY MANAGEMENT AS ENVISIONED BY PORTER-COLOGNE RATHER THAN IMPOSING THIS RESPONSIBILITY ON LOCAL GOVERNMENT. REQUESTS FOR FUNDING OF WATER QUALITY STUDIES AND IMPLEMENTATION OF WATER QUALITY PROGRAMS SHOULD BE PRESENTED BY THE REGIONAL BOARDS TO THE LEGISLATURE SO THAT

SUCH REQUESTS CAN BE EVALUATED IN THE CONTEXT OF COMPETING STATE NEEDS.

- RESOLVE STATEWIDE INCONSISTENCIES – INCONSISTENT REGULATORY INTERPRETATIONS PROMULGATED BY THE STATE'S NINE REGIONAL BOARDS SHOULD BE ADDRESSED BY DEVELOPMENT OF A STATEWIDE POLICY AND BY MODIFYING AS NECESSARY THE RESPECTIVE FUNCTIONS AND RESPONSIBILITIES OF THE STATE BOARD AND REGIONAL BOARDS.

- MANDATORY EXPERIENCE REQUIREMENTS FOR REGIONAL AND STATE BOARD MEMBERS – CANDIDATES FOR APPOINTMENT TO THE REGIONAL AND STATE BOARDS SHOULD BE REQUIRED TO DEMONSTRATE SIGNIFICANT EDUCATIONAL BACKGROUND AND WORK EXPERIENCE RELATIVE TO THE POSITION FOR WHICH THEY ARE BEING APPOINTED.

- DISPUTE RESOLUTION BY INDEPENDENT DECISION MAKERS – CONFLICTS REGARDING WATER QUALITY PERMIT TERMS OR RULES SHOULD BE RESOLVED BY INDEPENDENT ADMINISTRATIVE LAW JUDGES OR MEDIATION RATHER THAN RELYING ON AN INTERNAL AGENCY CONFLICT RESOLUTION PROCESS.

- REINSTATE THE STATE GRANT PROGRAM – TO ASSIST IN ACHIEVING CLEAN WATER AND TO ASSURE THAT REGULATORS MORE CAREFULLY

CONSIDER THE COSTS AND BENEFITS OF NEW RULES, THE STATE GOVERNMENT SHOULD RETURN TO ITS HISTORIC PRACTICE OF DIRECTLY FUNDING ATTAINMENT OF WATER QUALITY REGULATIONS IT ENACTS.

- SUPPORT LEGISLATION TO DEVELOP STABLE FUNDING SOURCES FOR NPDES COMPLIANCE PROGRAMS – DUE TO A NARROW INTERPRETATION OF PROPOSITION 218 EXEMPTIONS AND THE LACK OF FINANCIAL ASSISTANCE FROM THE STATE, LOCAL GOVERNMENTS ABILITY TO ADDRESS NEW REGULATIONS PROMULGATED BY THE REGIONAL BOARDS, WHICH INCREASE ADMINISTRATION, CAPITAL IMPROVEMENT, DEVELOPMENT REVIEW, COMPLIANCE ENFORCEMENT, MONITORING AND EDUCATION RELATED NPDES COSTS, IS SEVERELY HAMPERED.

- ACKNOWLEDGE PROTECTION OF LIFE AND PROPERTY AS A BENEFICIAL USE – DEFINE PROTECTION OF LIFE AND PROPERTY AS A BENEFICIAL USE IN PORTER COLOGNE IN ORDER TO LIMIT THE ASSIGNMENT OF INCOMPATIBLE POTENTIAL BENEFICIAL USES ON WATERS OF THE STATE USED AS AND MAINTAINED AS FLOOD CONTROL CONVEYANCES.

- CLEARLY DEFINE REGULATORY ROLES - ROLES AND DUTIES OF REGULATORY AGENCIES, PARTICULARLY THE REGIONAL BOARD, SHOULD BE CLEARLY SEPARATED AND DEFINED. FOR EXAMPLE, THE REGIONAL

BOARDS SHOULD NOT BE REGULATING HABITAT ALREADY UNDER THE PURVIEW OF CALIFORNIA FISH AND GAME.

THE DISTRICT WOULD ALSO LIKE TO SUPPORT CASQA'S POSITIONS ON THESE ISSUES. THANK YOU FOR YOUR TIME.

- FINAL COMMENT – I WOULD LIKE TO MAKE A CLOSING COMMENT. AS LONG AS THE LAWS OF PHYSICS REMAIN CONSTANT, MODERATE AND SIGNIFICANT FLOWS IN OUR DRAINAGE SYSTEMS WILL NEVER MEET THE WATER QUALITY OBJECTIVES CONTAINED IN THE BASIN PLANS. THIS IS WHY WE HAVE THE MEP STANDARD. COMPLIANCE ASSESSMENTS NEEDS TO BE APPLIED THROUGH EVALUATION OF STORMWATER PROGRAM ELEMENTS, NOT THROUGH NUMERIC STANDARDS. BASIN PLANS NEED TO BE REVIEWED TO SPECIFICALLY ADDRESS STORMWATER SEPARATELY, BECAUSE THE STANDARDS SET FROM A POINT SOURCE DISCHARGE FRAME OF REFERENCE CAN NEVER BE MET.

CASQA

California Stormwater Quality Association

"Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation"

January 28, 2005

Mr. Bruce Fujimoto
Storm Water Section Chief
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Development of Statewide Stormwater Policy

Dear Mr. Fujimoto:

Thank you for the opportunity to comment regarding the issues that should be addressed within the statewide stormwater policy. As you know, the California Stormwater Quality Association (CASQA) is composed of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout the state, and was formed in 1989 to recommend approaches to the State Water Resources Control Board (State Water Board) for stormwater quality management in California. In this capacity, we have assisted and continue to assist the State Water Board with the development and implementation of stormwater permitting processes.

The purpose of this letter is to convey in writing the three sets of verbal comments that CASQA representatives presented at the three listening sessions held this month on the statewide stormwater policy. Our comments address three key aspects of development of State policy: 1) why a statewide stormwater policy is necessary, 2) what the goals of the policy should be, and 3) what fundamental issues should be addressed within the policy.

Need for Statewide Stormwater Policy

Starting a couple of years ago and, as a matter of course in most of CASQA's communications, CASQA has been calling for the development of a statewide stormwater policy. This call has based on our collective experience with the first 10-12 years of stormwater permit implementation. What became increasingly obvious to us over the last few years is that:

1. *Stormwater is a nonpoint source issue being addressed with a point source regulatory model.* Most of the issues that we are facing can be traced to the application of the current regulatory model, which is based on 30+ years of experience with point sources (i.e., wastewater), with some accommodation for the non-point source nature of stormwater (e.g., maximum extent practicable (MEP) and best management practice (BMP) concepts).

P.O. Box 2105 Menlo Park, CA 94026-2105 (650) 366-1042
www.casqa.org info@casqa.org

2. Much of the current stormwater policy is being developed in an implicit fashion on a permit-by-permit, region-by-region basis instead of in an explicit way at the statewide level. This approach leads to contentious hearings, appeals, and misdirection of resources at the state and local level.
3. The lack of a State Policy is leading to inconsistent approaches to permit compliance and program assessments; and
4. Lack of a State Policy is creating inappropriate approaches in other water quality control programs (e.g., Ocean Plan / Areas of Special Biological Significance (ASBS)).

Proposed Goals for the Statewide Policy

The overall goals of the statewide stormwater policy should be to:

1. Establish a proactive and progressive stormwater program to ensure the protection of water quality and beneficial uses.
2. Establish the iterative / adaptive water quality planning process as the primary mechanism for stormwater quality management and permit compliance to meet water quality standards;
3. Recognize on a statewide basis that municipal and industrial (including construction) stormwater management programs must reduce pollutants to the MEP and best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT), respectively;
4. Support more consistent statewide implementation and enforcement of the stormwater program; and
5. Identify common core / baseline elements of a stormwater management program.

Cross-Program Issues

When considering cross-program issues, CASQA recommends that the statewide stormwater policy address the following:

1. The policy should be consistent with the State's Nonpoint Source Program, in particular, an iterative planning process that is flexible and adaptable over time.

2. The policy should encourage stormwater infiltration and groundwater recharge, however, the policy should be coordinated with existing regulatory programs (e.g., underground injection control program), which address discharges to groundwater. The policy should not duplicate or add new requirements.

3. The policy should allow for the incorporation of approved Total Maximum Daily Loads (TMDLs) into National Pollution Discharge Elimination System (NPDES) or Waste Discharge Requirements (WDR) permits at the time the permits are issued, reissued or re-opened.

4. The policy should clarify that the California Toxics Rule (CTR) adopted objectives apply to receiving waters and that the State's Implementation Policy for Toxic Pollutants (SIP) does not apply to the implementation of the CTR objectives to stormwater discharges.

5. The policy should clarify that the Ocean Plan's prohibition of discharges into ASBS was not intended to apply to stormwater at the time of adoption. To the extent that the State Water Board determines that stormwater discharges must receive an exception to discharge stormwater to ASBS, the policy should clarify that compliance with the statewide stormwater policy allows for an exception to the Ocean Plan's prohibition.

Monitoring

When considering monitoring, CASQA recommends that the statewide stormwater policy address the following:

1. The policy should recognize that the purpose of monitoring and assessment is to support effective management decisions, which in turn help protect or restore the marine (and freshwater) environment, its living resources, and its uses or resources that society considers beneficial.

2. The policy should provide guidance for dischargers regarding how one goes about determining "cause or contribute" as well as a better definition of what that means.

3. The policy should identify two types of monitoring – permit compliance monitoring and environmental monitoring.

4. The policy should require permit compliance monitoring (or programmatic monitoring) and assessment that focuses – not on environmental outcome – but on pollutant sources, the effectiveness of actions taken to reduce pollutants in stormwater, and actions performed. This approach is consistent with that recommend by the State of Washington in a report to their legislature in which the Department of Ecology describes its proposals for the municipal stormwater permits and its recommendations for stormwater management in the state based on their decade-plus of experience with the program.

5. The policy should use a combined approach of programmatic (i.e., performance goal) and environmental monitoring and assessment to assess overall program effectiveness.

6. The policy should recognize and accept the value of a comprehensive environmental monitoring and assessment approach, including evaluation of chemical, physical, biological, and aesthetic indices to inform decision-making and determine water quality impacts. Environmental monitoring may include:
    a. Water column toxicity
    b. Bioaccumulation (e.g., fish tissue concentrations)
    c. DO depletion (e.g., field measurement)
    d. Litter (e.g., visual)
    e. Oil/grease (e.g., visual)
    f. Excessive siltation/sedimentation (e.g., streambed stability)

7. The policy should establish "benchmarks" for key pollutants from industrial activities to assist in directing program implementation through an iterative process. Benchmarks must not be considered effluent limitations or be used to determine permit compliance.

8. The policy should include statistically based methods for assessing and determining if stormwater discharges are consistent with benchmark values.

9. The policy should acknowledge and allow for sufficient time to gather meaningful monitoring data to properly assess monitoring trends and water quality improvements. The policy should establish the minimum data needs for assessing trends / improvements. In this regard, the policy should consider consistency with the State listing policy that requires at least three years of data, establishment of baseline conditions, a statistical approach to evaluate trends in water quality measurements, consideration of seasonal effects, and occurrences of adverse biological responses, toxicity, etc.

10. The policy should encourage watershed or permittee group based monitoring and assessment to optimize resources and avoid redundancy.

Compliance Issues

When considering compliance, CASQA recommends that the statewide stormwater policy address the following:

1. The policy must, fundamentally, establish an adaptive, iterative stormwater quality management process as the primary method for complying with water quality standards and other water quality regulatory requirements.

2. The policy should use quantitative water quality based parameters to assess stormwater program effectiveness and not as a permit compliance tool.

3. The policy should establish the management process / framework necessary to provide for discharger accountability. Accountability should be used to assess permit compliance and ensure progress is being made towards water quality protection.

4. The policy should encourage the setting of performance goals (either by establishing the framework to develop the goals or by identifying specific goals) by municipal and industrial / construction dischargers.

5. The policy should allow for sufficient time to implement Stormwater Management Plans or Stormwater Pollution Prevention Plans as well as the behavior changes that are necessary for water quality improvements.

6. The policy should require the incorporation of adopted TMDL implementation measures in lieu of numeric load reductions in permits.

Standards Issues

When considering standards, CASQA recommends that the statewide stormwater policy address the following:

1. The policy should acknowledge that the impacts from stormwater discharges depend on a wide range of factors (magnitude and duration of the rainfall event, the time period

between events, soil conditions, the fraction of land that is impervious, land use activities, presence of illicit connections, and the ratio of stormwater discharges to receiving water flows) and that these factors are not fully understood from a regulatory and water quality protection perspective.

2. The policy should acknowledge that the ability to comply with current water quality standards in a stormwater program is an unknown and that more information is needed to determine the application and appropriateness of current water quality standards for receiving waters (e.g., event mean concentration vs. acute or chronic standards).

3. The policy must support the further development and implementation of the MEP standard by establishing the iterative and adaptive management approach as the basis for complying with water quality standards.

4. As part of the adaptive management approach, the statewide policy must include a process for assessing the appropriateness of water quality standards and, if necessary, allow for the modification of the standards (e.g., create seasonal standards, site-specific objectives, etc.). Such an approach is entirely consistent with U.S. Environmental Protection Agency's (USEPA) conception of the water quality planning process (see Water Quality Planning Handbook),

5. The policy should support the development of best management practice based BAT/BCT standards for industrial and construction discharges in lieu of development of effluent limits based on water quality standards.

6. Water quality based limits should only be considered after an iterative and adaptive management approach has been completed and complementary monitoring data supports the need for water quality based limits.

Permitting Issues

When considering permitting, CASQA recommends that the statewide stormwater policy address the following:

1. The policy should support the use of standard permit requirements for municipal stormwater programs but allow for adjustments due to local water quality issues.

2. The policy should require consistency between Regional Water Boards for permittees whose boundaries cross two or more Regional Water Board boundaries.

3. The policy should only require Phase II communities to implement the USEPA six minimum control measures.

4. The policy should encourage the combining of Phase I and II programs in geographically similar areas to provide for a more comprehensive water quality protection program.

5. The regulatory impetus for watershed based water quality planning must be proportional to the water quality benefits that would accrue from the additional management effort and not be counterproductive.

Other Issues for Consideration

Other issues that CASQA recommends that the statewide stormwater policy address include the following:

1. The policy must recognize that there are some aspects of stormwater quality management that are more effectively and appropriately addressed by other regulatory authorities and programs (e.g., pesticide use through the Department of Pesticide Registration, and aerial deposition through air quality management districts).

2. The policy should recognize that stormwater control must be addressed through a partnership approach between the State and local governments and that neither entity can do it alone.

3. The policy should encourage a broader watershed approach to addressing water quality and quality of life issues including land use planning, stream bed buffer zones, alternative transportation, low impact development, product controls, water conservation, etc.

4. The policy should support the need to have reliable funding (especially for municipalities) and the policy should support the need to redefine stormwater as a utility not subject to Proposition 218.

Again, thank you for the opportunity to provide our recommendations regarding the issues that should be addressed within the statewide stormwater policy. We look forward to continuing to work with the State Water Board staff on this important endeavor and greatly appreciate your efforts.

Yours truly,

Karen Ashby

Karen Ashby, Chair
California Stormwater Quality Association

cc: CASQA Board of Directors and Executive Program Committee
Stan Martinson, State Water Board
Tom Howard, State Water Board
Celeste Cantú, State Water Board

Rokni Development Company

SWRCB
Storm Water Unit
P.O.Box 1977
Sacramento CA, 95812-1977

January 05 ,2005

Re; Storm water Policy
To whom it may concern,

We appreciate the opportunity to make comments on such an important and sensitive subject, and we hope at the end it will enhance the quality of storm water runoff.

1) The objective for creating a new policy should be for better understanding of the regulations by dischargers as well as the regulatory people.
2) Since the adoption of the Storm Water Quality Enforcement Policy we thought here is something that we can anticipate the regulatory community approach to any given situations. To our discouragement we find that most of the Regional Boards staff are not even aware that such policies exist. Why?
3) It is our experiences that not even two people in the same Regional board have the same understanding of any given regulations and everything comes down to one person's understanding or not understanding the regulations. Therefore NPDES regulations are not being enforced consistently.
4) There must be a policy requiring Regional Board staff to attend and participate when the State Board is adopting new regulations.
5) There must be a policy requiring each Regional Board to hold public forum (not talking at dischargers without taking responsibilities for what they say) to learn as well as share knowledge to enhance water quality and understand permit requirements and objectives.
6) State Board should be an example and hold open forums and not be stingy with their time (listening sessions), is the State Board not comfortable dealing with questions that have not been rehearsed? Who is going to take charge and lead?
7) While adopting other NPDES permits (MS4, etc.) there must be a policy of not interfering with other existing permits. There are number of discrepancies in our MS4 permit and the construction permit.

Respectfully,

Shari Rokni *(CPESC)*
Rokni Development Co.

P.O. Box 358, Davis, California 95617 Tel/Fax: (707) 678–1087 ST.LIC: 608634 CPESC#1720

COALITION FOR PRACTICAL REGULATION

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WHITTIER

January 6, 2005

Via E-Mail

Mr. Stan Martinson, Chief
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Attn.: Jennifer Mu and Thomas Filler

Re.: Comments on the Development of a Statewide Policy for the Implementation of the Stormwater Program

Dear. Mr. Martinson:

On behalf of the Coalition for Practical Regulation (CPR), an ad hoc group of 43 cities within Los Angeles County that have come together to address water quality issues, I would like to submit the following comments regarding development of a Statewide Policy for the Implementation of the Stormwater Program (Policy).

California needs a comprehensive statewide stormwater Policy – not just a policy for implementation of the stormwater program. The California Water Code assigns to the State Water Resources Control Board responsibility for developing policy and assigns to the Regional Water Quality Control Boards responsibility for implementing the policies established by the State Board. In the absence of a comprehensive statewide stormwater policy, Regional Boards have initiated policy development through permit requirements and development of TMDLs. Much of current stormwater policy is thereby being developed on a permit-by-permit basis. This approach has led to contentious hearings, appeals, and misapplication of resources. Concurrently, the State Board should develop guidance on the application of the stormwater policy. A lack of guidance by the State has led to an inconsistent approach to permit compliance and program assessments, and a lack of overall State Stormwater Policy has created inappropriate approaches in other plans and programs (e.g., The Ocean Plan and ASBSs). The lack of policy is leading not only to inconsistent applications of requirements, but to confusion about which standards will be applied to stormwater.

2175 Cherry Ave., Signal Hill, CA 90755 (562) 989-7306 www.citiessavejobs.com

The November 19, 2004 letter announcing the three State Board listening sessions included a list of issues to be discussed at those sessions. Most of the issues listed were implementation issues. We think that underlying principles and potential basic policies should be thoroughly discussed before focusing on implementation issues. In fact, our understanding of the State Board's direction at the September 23, 2003 workshop on the Policy for Implementation of the Stormwater Program was to develop a State Stormwater Policy – not just a policy for implementing the stormwater program. Basic policy questions should be answered before development of "guidance that will be used by the staffs at the State Water Resources Control Board and the Regional Water Quality Control Boards in the implementation of the stormwater program." Many water quality regulations and standards were developed without proper consideration of the episodic and variable nature of stormwater. There should be a thorough review of the differences between stormwater discharges and traditional point source discharges. What are the specific characteristics of stormwater that should be recognized in a stormwater policy and how should regulations and standards be adjusted to account for the characteristics of stormwater discharges?

California's Stormwater Policy Should Reflect the Nature of Stormwater

The Statewide Stormwater Policy, to be workable, must recognize the characteristics of stormwater. Its episodic and variable nature makes it very different from traditional point sources. The Policy should be based on an understanding of this variability in order to facilitate compliance on the part of the regulated municipalities of California. A system of waivers or exemptions for significant high-intensity and long-duration storm events needs to be in place prior to Policy implementation. The Policy should direct Regional Boards to account for the differences between stormwater and traditional point sources in their permitting and enforcement activities.

The State Board Should Specify a Maximum Size Storm in the Policy

One aspect of recognizing the seasonal nature of stormwater is setting a maximum size storm level for which permittees are required to prepare. Permits have begun to address the issue. The General Construction Permit contains a design standard for sediment basins based on the precipitation intensity of a 10-year, 6-hour event. The SUSMP requirements in some municipal NPDES permits specify volume-based and flow-based design standards for post-construction best management practices. However, it is not always clear that meeting these standards constitutes permit compliance.

Workable policies of any kind need to reflect an understanding of the process they seek to regulate. CPR wishes to emphasize that it is critical to develop a statewide Policy that appropriately balances water quality protection with an approach that takes into account the nature of stormwater, which is something that cannot be regulated.

The State Board Should Define Maximum Extent Practicable (MEP) for Statewide Implementation

The Statewide Policy should include a definition of MEP for California in order to prevent the Regional Boards from defining it by whatever requirements they place in permits. CPR supports using a definition based on the one used by State Board Counsel Betsy Jennings in a 1993 memo, which includes a requirement that Regional Boards consider the costs, technical feasibility, and public acceptance of new stormwater regulations, and has been used in several MS4 permits.

Further, the Policy needs to establish that compliance with MEP standards is reached once BMP effectiveness can be demonstrated -- narratively and/or numerically -- based on site-specific water quality management goals. It is critical that cities be able to know when they have reached MEP in order to properly navigate the requirements of designing, funding, implementing, and monitoring local stormwater programs.

Other Points for Consideration

The attached "Points for Consideration in Relation to Development of a Statewide Stormwater Policy" briefly summarizes other points that should be considered in developing both a Statewide Stormwater Policy and guidance for implementing the Policy.

Thank you for the opportunity to provide these comments about development of a much needed Statewide Stormwater Policy.

Sincerely,

Larry Forester
Steering Committee Member
Coalition for Practical Regulation

Points for Consideration in Relation to Development of a Statewide Stormwater Policy

- The policy should clearly recognize the differences between stormwater discharges and traditional point source discharges and direct Regional Boards to account for these differences in their permitting and enforcement activities.

- The policy should define maximum extent practicable (MEP) for California to prevent Regional Boards from attempting to define it by whatever requirements they place in permits. The definition of MEP could be based on the 1993 memo by Betsy Jennings that has been referenced in several MS4 permits.

- The policy should include guidance on how to implement the definition of MEP. One approach could be to emphasize that "MEP means using the most effective set of best management practices (BMPs) that can be implemented and still remain practicable. A BMP is effective if it prevents, reduces, or removes Pollutants that would otherwise be present in the runoff due to human activity. A BMP is practicable if it complies with stormwater and other regulations; is compatible with the area's land use, character, facilities, and activities; is technically feasible; and provides benefits that are reasonable in relation to costs. MEP generally emphasizes pollution prevention and source control BMPs as the first line of defense in combination with treatment controls serving as a secondary line of defense." (from Orange County model Local Implementation Plan)

- The policy should address cross-media pollution, especially atmospheric deposition and direct Regional Boards to work with the Air Resources Board and the Air Quality Management Districts to control the sources of atmospheric deposition that are contributing to impairments of beneficial uses in the waters of California.

- The Policy should clarify that the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries of California (SIP)* established implementation provisions for priority pollutant criteria promulgated by USEPA through the National Toxics Rule (NTR) and through the California Toxics Rule (CTR), as well as for priority pollutant objectives established by the Regional Water Quality Control Boards in their Basin Plans, and that since the SIP does not apply to regulation of stormwater discharges, the priority pollutant criteria of the NTR, the CTR or Basin Plans are not to be used to regulate stormwater discharges.

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January 6, 2005 Via E-Mail

Mr. Stan Martinson, Chief
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Attn.: Jennifer Mu and Thomas Filler

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Thank you for the opportunity to provide these comments about development of a much needed Statewide Stormwater Policy.

Sincerely,

Larry Forester
Council Member, City of Signal Hill
Coalition for Practical Regulation

cc: CPR Members

Attachment: Points for Consideration

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The November 19, 2004 letter announcing the three State Board listening sessions included a list of issues to be discussed at those sessions. Most of the issues listed were implementation issues. We think that underlying principles and potential basic policies should be thoroughly discussed before focusing on implementation issues. In fact, our understanding of the State Board's direction at the September 23, 2003 workshop on the Policy for Implementation of the Stormwater Program was to develop a State Stormwater Policy – not just a policy for implementing the stormwater program. Basic policy questions should be answered before development of "guidance that will be used by the staffs at the State Water Resources Control Board and the Regional Water Quality Control Boards in the implementation of the stormwater program." Many water quality regulations and standards were developed without proper consideration of the episodic and variable nature of stormwater. There should be a thorough review of the differences between stormwater discharges and traditional point source discharges. What are the specific characteristics of stormwater that should be recognized in a stormwater policy and how should regulations and standards be adjusted to account for the characteristics of stormwater discharges?

California's Stormwater Policy Should Reflect the Nature of Stormwater

The Statewide Stormwater Policy, to be workable, must recognize the characteristics of stormwater. Its episodic and variable nature makes it very different from traditional point sources. The Policy should be based on an understanding of this variability in order to facilitate compliance on the part of the regulated municipalities of California. A system of waivers or exemptions for significant high-intensity and long-duration storm events needs to be in place prior to Policy implementation. The Policy should direct Regional Boards to account for the differences between stormwater and traditional point sources in their permitting and enforcement activities.

The State Board Should Specify a Maximum Size Storm in the Policy

One aspect of recognizing the seasonal nature of stormwater is setting a maximum size storm level for which permittees are required to prepare. Permits have begun to address the issue. The General Construction Permit contains a design standard for sediment basins based on the precipitation intensity of a 10-year, 6-hour event. The SUSMP requirements in some municipal NPDES permits specify volume-based and flow-based design standards for post-construction best management practices. However, it is not always clear that meeting these standards constitutes permit compliance.

Workable policies of any kind need to reflect an understanding of the process they seek to regulate. CPR wishes to emphasize that it is critical to develop a statewide Policy that appropriately balances water quality protection with an

approach that takes into account the nature of stormwater, which is something that cannot be regulated.

The State Board Should Define Maximum Extent Practicable (MEP) for Statewide Implementation

The Statewide Policy should include a definition of MEP for California in order to prevent the Regional Boards from defining it by whatever requirements they place in permits. CPR supports using a definition based on the one used by State Board Counsel Betsy Jennings in a 1993 memo, which includes a requirement that Regional Boards consider the costs, technical feasibility, and public acceptance of new stormwater regulations, and has been used in several MS4 permits.

Further, the Policy needs to establish that compliance with MEP standards is reached once BMP effectiveness can be demonstrated -- narratively and/or numerically -- based on site-specific water quality management goals. It is critical that cities be able to know when they have reached MEP in order to properly navigate the requirements of designing, funding, implementing, and monitoring local stormwater programs.

Other Points for Consideration

The attached "Points for Consideration in Relation to Development of a Statewide Stormwater Policy" briefly summarizes other points that should be considered in developing both a Statewide Stormwater Policy and guidance for implementing the Policy.

Thank you for the opportunity to provide these comments about development of a much needed Statewide Stormwater Policy.

Sincerely,

Larry Forester
Council Member, City of Signal Hill
Coalition for Practical Regulation

cc: CPR Members

Attachment: Points for Consideration

City of MONROVIA 1887

VIA EMAIL

January 7, 2005

Mr. Stan Martinson, Chief
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Attn: Jennifer Mu and Thomas Filler

Re: Comments on the Development of a Statewide Policy for the Implementation of the Stormwater Program

Dear Mr. Martinson:

Thank you for the opportunity to comment on the Draft Implementation Policy for the Implementation of the Storm Water Program. The City appreciates the State Boards efforts to solicit input by conducting "listening sessions" locally to assist the cities in Los Angeles County in providing input.

For many years, the regulated community has felt the development of a comprehensive statewide policy of the storm water program was needed to assist the cities in continuing to meet permit requirements as a discharger and continue our improvement of the quality of our lakes, rivers and oceans. A goal we know the State Board is committed to achieving. In an arena of constantly evolving NPDES storm water permits, and the introduction of TMDLs, a comprehensive policy is needed to bring consistency among the Regional Water Quality Control Boards in California. The State Water Resources Control Board can achieve this and other important items in a comprehensive state policy on stormwater. The following are our comments for the State Board's consideration.

"Consistency Among the Regional Boards" has been listed as an item for discussion concerning permitting issues. A consistent policy for permitting among the nine boards is something that must be included in a future comprehensive stormwater policy. As regulated discharger it is challenging to maintain and anticipate what new requirement the local board will request as new NPDES permits are developed. There are many differences among municipal NPDES permits as you move from one region to another and the lack of an comprehensive policy leads to

inconsistent application of permit requirements, and ultimately confusion about how the standards will be applied to regulating stormwater.

The policy must also include clear guidance to the Regional Board on the issue of MEP (Maximum Extent Practicable) standard. For years, the regulated community and Regional Boards have struggled over what constituents MEP, and have sincerely different opinions to its meaning. A recent court case in San Diego County appears to have provided a legal interpretation, and the regulated community is concerned over its potential costs impacts in the years to come. A clear definition within a State Policy is needed to define MEP on a statewide basis. It is our understanding that a attempt to define MEP was provided by the State's legal council in a February 11, 1993 memo, where, costs, technical feasibility, and public acceptance of new stormwater regulations were provides as parameters. This might be a starting point for the State Board to consider when providing an "official" State policy on MEP.

Finally, the policy should include guidance concerning cross media pollution, especially atmospheric deposition. Municipal dischargers are challenged with reducing constituents of concern, some that are found to be a source of atmospheric deposition. The policy should recognize this challenge and provide statewide guidance to all Regional Boards and instruct the Boards worked with their State counterparts (AQMD, ARB) to address the issue.

Other Points for Consideration

Attached are "Points for Consideration in Relation to Development of a Statewide Stormwater Policy" that briefly summarizes additional points that should be considered in developing both a Statewide Stormwater Policy and guidance for implementing the Policy.

Thank you for the opportunity to provide these comments on a Statewide Stormwater Policy, and the upcoming scheduled listening sessions. We look forward to seeing an official policy that will assist both the Regional Boards and the regulated community.

Sincerely,

David Fike
Director of Public Works

Points for Consideration in Relation to Development of a Statewide Stormwater Policy

- The policy should clearly recognize the differences between stormwater discharges and traditional point source discharges and direct Regional Boards to account for these differences in their permitting and enforcement activities.

- The Policy should clarify that the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries of California (SIP)* established implementation provisions for priority pollutant criteria promulgated by USEPA through the National Toxics Rule (NTR) and through the California Toxics Rule (CTR), as well as for priority pollutant objectives established by the Regional Water Quality Control Boards in their Basin Plans, and that since the SIP does not apply to regulation of stormwater discharges, the priority pollutant criteria of the NTR, the CTR or Basin Plans are not to be used to regulate stormwater discharges.

- The policy should clarify the relationship of stormwater discharges to the California Ocean Plan. In particular, it should add a new Section III.E.3 to the Ocean Plan (or an equivalent cross-reference) recognizing that stormwater discharges regulated by waste discharge requirements are limited-term discharges that may be discharged into Areas of Special Biological Significance (ASBS) even though they may result in temporary and short-term change in existing water quality.

- The policy should require that all future Water Quality Control Plans (Basin Plans) adopted by the Regional Boards contain a chapter describing stormwater and the differences between stormwater discharges and traditional point source discharges.

- The policy should provide for the adoption of a statewide MS4 permit for Phase I municipal permittees or a model MS4 permit in which 90% of the permit language is common throughout the State.

- The policy should provide for a statewide review of beneficial uses and water quality objectives to adopt subcategories of beneficial uses and wet weather water quality objectives.

- The policy should provide exceptions from water quality objectives for high intensity rainfall and high volume stormwater discharges.

- The policy should mandate that water quality objectives apply only to receiving waters.

- The policy should provide for expansion of the State's Surface Water Ambient Monitoring Program (SWAMP) consistent monitoring in major watersheds (hydrologic units) across the state.

- The policy should mandate the use of adaptive management, as recommended by the National Research Council, for achievement of water quality objectives and TMDL numeric targets by stormwater dischargers.

- The policy should direct that beneficial uses and water quality objectives apply only to receiving waters specifically identified in the Water Quality Control Plans and that the so-called "tributary rule" is not to be used to extend beneficial uses and water quality objectives upstream to components of the MS4.

- The policy should commit the State Board to reviewing the application of the drinking water policy to flood control channels and other components of an MS4.

- The policy should mandate that Total Maximum Daily Loads (TMDLs) recognize and accommodate the unique nature of stormwater through the incorporation of seasonal variations and by providing waivers for high intensity and high flow events.

James Cowan, City of Alhambra
January 13, 2005
SWRCB Stormwater Policy Development Listening Session, Diamond Bar, CA

I support the Board's effort to develop a much need statewide stormwater program policy document and I appreciate the opportunity to provide input during this process. I also suggest that it will be necessary to develop a companion document that will guide implementation of the comprehensive policy.

I support the comments presented by the LA County MS4 Permittees, Executive Advisory Committee and also those provided by CASQA.

In an effort to conserve time for the Board's staff, I will not repeat the many common issues of concern that have been previously provided by others. I do have the following specific comments.

- In regards to the relationship of the MS4 permits and incorporation of TMDL WLA, I would like you to consider guidance provided by USEPA HQ to their Regional offices dated Nov. 22, 2002. The guidance memo recommends that effluent limits be expressed as BMPs, and acknowledges that an iterative approach be used to control pollutants in stormwater.

- In CA there are over two dozen Phase I MS4 permits and many of these permits have quite different requirements. The policy should address a need for consistent statewide permit requirements so that municipal programs are more readily comparable and so that compliance tools can be more easily shared. Inherent in the need for statewide standardization of permit requirements is to provide a clear definition that MEP compliance means BMP implementation and clarify that water quality objectives only apply to receiving waters. There should also be a mechanism to allow suspension of standards during high flow events and recognition of seasonal beneficial uses. In the foreseeable future, I would also suggest a coalescing of permit requirements for the Phase I and II municipal permits.

- Given that we have strained local government budgets and very limited sources available to fund a stormwater program, a significant timeline must be allowed in permits to plan for program expenditures, seek approval for a proposed program budget, and to implement a program.

- Monitoring programs and assessment sites should be on a regional scale and not be implemented by each jurisdiction. Future monitoring program design needs to be based on prior results and not continue to confirm known relationships. The monitoring program requirements need to have some flexibility to respond to any need for special studies. I recommend that monitoring programs be significantly scaled back on alternate years to allow resources to be used for special studies and evaluation of the data. The type of monitoring reports should also be staggered to allow for submittal of a basic core annual report, but allow for a more substantial and expanded annual report in years 3 and 5. The use of the state's ambient monitoring program results when applicable could be incorporated in the expanded monitoring report along with any special study results. An analysis of

the data generated by the Industrial Activities General Stormwater Permit should be shared with municipalities.

Thank you for the opportunity to provide these comments.

LOS ANGELES COUNTY OFFICE OF EDUCATION
TESTIMONY STATEMENTS
STORM WATER HEARINGS – JANUARY 2005
STATE WATER RESOURCES CONTROL BOARD

Good Morning! My name is Gerald Yarbrough and I represent the Los Angeles County Office of Education. We represent the 80 school districts and 13 community colleges located in Los Angeles County.

Let me start by saying I applaud the efforts of the State Water Resources Control Board (SWRCB) for holding these hearings and for seeking public input into the policies and programs that will ultimately lead to regulations that improve water quality in the bays, beaches, lakes and underground aquifer water systems in California.

Secondly, we in education very much appreciate that the SWRCB has recognized that public schools are "Non-Traditional" governmental agencies. We also appreciate our local board's efforts, the Los Angeles Regional Water Quality Control Board, to push hard for regional policies that specifically address local issues and problems.

While we do not always agree on every policy or position before each board, the educational community fundamentally agrees that we must protect our environment. Many school districts in Los Angeles County have adopted Integrated Pest Management Programs, Food, Oil and Grease Programs, and Solid Waste Collection Programs. The curriculum of every school district includes some environmental studies.

The biggest compliance obstacle for the educational community is the cost to implement storm water regulations. The Federal government and the State do not provide supplemental funding to implement storm water programs. For every dollar spent for storm water compliance, one dollar is taken away from educating children. Moreover, the educational community expects a shrinking share of State revenues available for public education and increasing criticism for lower educational achievement compared to other States.

Ultimately, storm water regulatory compliance is pitted against other educational regulatory compliance. Educational programs like "No Child Left Behind" and State mandated test scores for student achievement are pitted against storm water compliance for the Construction, Industrial and SmallMS4 permits.

We have many concerns about how the SWRCB and the Los Angeles Regional Water Quality Control Board interface for policy implementation and how future water policies and associated implementation costs will impact school districts.

We have multiple concerns, however, we will only address three of them today:

- Our first concern is consistent policy making authority between the State and Regional Boards. Our largest school district, the Los Angeles Unified School District (LAUSD), was contacted in June 2004 by the Los Angeles Regional

compliance to State regulations. Without group monitoring, some of our participating districts would not have been able to comply.

-We seek a continuance of the Group Monitoring concept for Non Traditional agencies.

- Our third concern is that the closing date contained in the"grandfathered construction projects" provision of the SmallMS4 storm water permit has expired. Because many regional boards have not designated their respective school districts, the State Allocation Board has not pushed for final approval of all projects submitted by April 30, 2003. It was anticipated that all school and community college districts would be designated by December 31, 2004. That is why the grandfathered clause had the December 31, 2004 date inserted.

  -The grandfathered construction projects clause is "For non-traditional MS4s that seek coverage under this Permit, implementation of this control measure (Post Construction Storm Water Management) will not require redesign of projects under active construction at the time of designation or for K-12 school or community college facilities that have been submitted to the Department of General Services, Division of the State Architect before adoption of the permit, and which receive final approval from the State Allocation Board or the Public Works Board, as appropriate on or before December 31, 2004."

  -We seek to work with you on developing language to address the December 31, 2004 deadline that has already passed.

We also have issues of concern on:

- How to address cross-boundary issues;
- The draft Industrial Permit;
- Consistency between Phase 1 and Phase 2 requirements;
- Consistency among the Construction, Industrial and SmallMS4 permits;
- Use of quantitative parameters to measure compliance; and
- The definition of "maximum extent practicable"

Thank you for the opportunity to address this Board and please keep us in mind if you would like to conduct workshops directly with school districts or send out information or if you would like someone from the Los Angeles County Office of Education to work with your staff.

Questions regarding this document should be made to:
Los Angeles County Office of Education
Gerald Yarbrough: Tel. (562) 922-6122 or Email: Yarbrough_Gerald@lacoe.edu
Roger Chang: Tel. (562) 940-1645 or Email: Chang_Roger@lacoe.edu

(DBAS 1-11-05)

Los Angeles Unified School District

Facilities Services Division

DESIGN AND A/E TECHICAL SUPPORT

FACSIMILE TRANSMITTAL SHEET

TO: Bruce Fujimoto	FROM: Albert P. Leung
COMPANY: SWRCB	DATE: 1/11/2005
FAX NUMBER: (916) 341-5543	TOTAL NO. OF PAGES INCLUDING COVER:
PHONE NUMBER:	SENDER'S PHONE NUMBER: (213)633-7656
RE: COmments to State Water Program	

☐ AS REQUESTED ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

NOTES/COMMENTS:

INTERIM BUSINESS SERVICES CENTER: 355 S GRAND AVE. 6TH FLOOR, LOS ANGELES, CA 90071
MAILING ADDRESS. BOX 2298, LOS ANGELES, LOS ANGELES, CA 90051 PHONE: (213)633-7660 FAX: (213)633-7057

Los Angeles Unified School District

ROY ROMER
Superintendent

JAMES A. McCONNELL, Jr.
Chief Facilities Excecutive

Facilities Services Division

JAMES DELKER
Deputy Chief Facilities Excecutive

RICHARD LUKE
Director of Design & A/E Technical Support

January 11, 2005

BY FACSIMILE
Arthur G. Baggett, Jr., Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: LAUSD Comments on State Board Draft Storm Water Policy

Dear Chairman Baggett:

The Los Angeles Unified School District (District) appreciates the opportunity to submit this letter and to participate in an open dialogue with the State Water Resources Control Board (State Board) regarding its draft policy for implementing the Storm Water Program.[1]

For over two years, the District has met with and appeared before the State Board and the Los Angeles Regional Water Quality Control Board (Regional Board) to discuss the District's unique concerns regarding the storm water program. For your convenience, I have enclosed three letters previously submitted by the District to the State Board and the Regional Board which set forth some of the District's concerns.

For background purposes, the District would like to share with the State Board and the Regional Board the effort it has undertaken with respect to developing and implementing pro-active and effective programs to prevent pollutants from entering the storm drain. Some of these programs include: (1) the Integrated Pest Management Program (reduce usage of traditional pesticides), (2) Environmental Training (training employees on compliance and best management practices), (3) Hazardous Waste Management Program (appropriate handling of hazardous waste), (4) Chemical Product Review Program (utilization of less toxic chemicals), (5) the Medical Waste Management Program (appropriate management of medical waste), (6) Environmental Compliance Inspections (site inspections to audit compliance), (7) Collaborative for High Performance Schools (design of high performance school environments that include storm water measures), (8) Construction Activity Storm Water Management Program (implement best management practices to reduce off-site flow of pollutants at construction sites), (9) Industrial Activity Storm Water Management Program (implement best management practices to reduce pollutants at garages), (10) Fats Oil and Grease Management Program (implement best management practices to reduce FOG discharges at cafeterias), and (11) Solid Waste Management and Recycling Program (implement best management practices to reduce and recycle solid waste).[2]

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[1] The District also has reviewed and supports the January 6, 2005 comments submitted by C.A.S.H.

[2] See November 27, 2002 letter from LAUSD to State Board, pp. 2-4.

To date, the District has not been designated as a Permittee under the Waste Discharge Requirements for Storm Water Discharges From Small Municipal Storm Sewer Systems (WQO 2003-0005) (Small MS4 Permit). Nevertheless, for the next phases of construction, the District has updated its planning and design requirements to comply with the Post Construction Control Measures contained in the Small MS4 Permit.

While the District has already raised many significant issues to the State Board regarding the storm water program, the District would like to highlight the following:

1. Discrepancy Between the General Construction Activity Permit and the Small MS4 Permit

   The General Construction Activity Permit includes Standard Urban Storm Water Mitgation Plan (SUSMP) as the quantitative post-construction measure provision under the Phase I NPDES Permit. The SUSMP requirement in the construction activity permit is significantly different from the post construction measure requirements for non-traditional Small MS4s under the Small MS4 Permit. In addition, the primary permitees of Phase I NPDES are counties and cities, the District believes that Maximum Extent Practicable (MEP) for counties and cities are different from school facilities.

   The District is concerned about this discrepancy and seeks to obtain clarification from the State Board.

2. Deadline for Exemption From the Small MS4 Permit

   The design, funding, review and approval process which applies exclusively to new school construction and improvement projects is both unique and time intensive. It is layered with different phases of approval that trigger the release of funds at different times during the review and approval process.[3]

   The Small MS4 Permit currently requires that:

   > "For non-traditional MS4s that seek coverage under this Permit, implementation of this control measure (Post Construction Storm Water Management) will not require redesign of projects under active construction at the time of designation or for K-12 school or community college facilities that have been submitted to the Department of General Services, Division of the State Architect before adoption of the permit, and which receive final approval from the State Allocation Board or the Public Works Board, as appropriate on or before December 31, 2004."

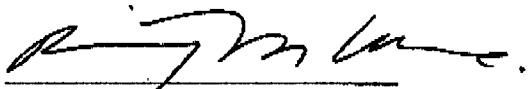
   As previously noted, the District has not yet been designated a Permittee under the Small MS4 Permit. However, the District is proceeding, in good faith, with planning and design of new schools to comply with the Small MS4 Permit. We are concerned that, in a worst case scenario, the District will be required to redesign projects already in the advanced planning and design stages, but not yet approved by the Division of State Architects. If this were to occur, the impact on project budget, scope and time would delay our projects and reduce our capability to provide urgently needed schools to the children of the District.

[3] See December 23, 2002 letter from LAUSD to State Board, pp. 4-6.

We request the State Board to work with the District to clarify which projects will be subject to the Small MS4 Permit and whether the storm water measures currently being incorporated into the planning and design of new schools are adequate.

The District fully supports the objectives of the State Board and the Regional Board. Please feel free to contact Mr. Albert Leung at (213) 633-7656 or email at albert.leung@lausd.net if you have any questions or require further clarification.

Sincerely,



Richard Luke
Facilties Services Division
Los Angeles Unifed School District

C: Celeste Cantu, Executive Director, SWRCB(by facsimile)
Peter Silva, Board Member, SWRCB (by facsimile)
Richard Katz, Board Member, SWRCB (by facsimile)
Gary Carlton, Board Member, SWRCB (by facsimile)
Nancy Sutley, Board Member, SWRCB (by facsimile)
Bruce Fujimoto, SWRCB (by facsimile)
Jonathan Bishop, Executive Officer, LARWQCB (by facsimile)
Dr. Xavier Swamikannu, LARWQCB (by facsimile)
James Delker, Acting Chief Facilities Executive, Existing Facilities, LAUSD

LOS ANGELES UNIFIED SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
355 S. GRAND AVENUE, SUITE 1153
LOS ANGELES, CALIFORNIA 90071
TEL: (213) 633-7434
FAX: (213) 633-7520

ROY ROMER
SUPERINTENDENT OF SCHOOLS

HAROLD J. KWALWASSER
GENERAL COUNSEL

JAY F. GOLIDA
ASSOCIATE GENERAL COUNSEL

November 27, 2002

VIA FACSIMILE AND U.S. MAIL

Mr. Arthur G. Baggett, Jr.
Chair, State Water Resources Control Board
1001 I Street
Post Office Box 100
Sacramento, CA 95812

Re: October 28, 2002 Draft Waste Discharge Requirements For Storm Water Discharges From Small Municipal Separate Storm Sewer Systems

Dear Chairman Baggett:

The Los Angeles Unified School District ("LAUSD" or the "District") has received and reviewed the State Water Resources Control Board's ("State Board") October 28, 2002 Second Draft "Waste Discharge Requirements for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems" (the "Draft Permit"). The purpose of this letter is to provide comments to the Draft Permit. LAUSD appreciates the opportunity to offer these comments in the spirit of initiating an open and productive dialogue in regard to the Draft Permit.

This comment letter is designed to provide the State Board with: (1) an overview of the District; (2) a description of the storm water programs currently being implemented by the District; and (3) specific "areas of concern" in the Draft Permit.

I. Los Angeles Unified School District

LAUSD is the second largest school district in the nation and currently covers 704 square miles within the City of Los Angeles and 28 other cities. The District is segregated into 11 local districts which in total has a population of over 900,000 students and 80,000 employees. The District is comprised of over 900 schools and is currently engaged in an unprecedented construction project to build new schools and improve and expand existing schools. By 2006, LAUSD is scheduled to complete the construction of 159 new projects including 80 new schools, 60 on-site building additions and 19 playground expansion projects

(collectively referred to as the "Projects"). The 139 building projects will create 3,222 new classrooms and will accommodate a total of 76,871 students on a 2-semester basis. New schools and site expansions will require the acquisition of over 450 acres of land.

The majority of the Projects have been in the planning, design and approval stage for over two years. Over the past two years, the Projects have been presented to and approved by the Division of State Architects, the Office of Public School Construction, the California Department of Education and the Department of Toxic Substances Control. This high level of review and scrutiny resulted in Projects that have been designed in accordance with all applicable laws and regulations in effect at the time of approval. In many instances the District has been proactive and exceeded existing regulatory standards by incorporating additional environmental measures into the design and construction of the Projects.

LAUSD requests the State Board to recognize the size and unique composition of the District in determining how to modify the Draft Permit. The mission of LAUSD is to create the best learning environment possible for the more than 900,000 children that attend our schools. In order to tackle this challenge, the District is only provided with a finite amount of resources. It is from this perspective that the District submits its comments to the Draft Permit for consideration by the State Board.

II. Existing Programs

The District has procedures in place to facilitate compliance with all storm water regulations and permits currently in effect. These include, but are not limited to, the General Statewide NPDES Permit for Construction Activity and the Storm Water General Permit for Industrial Activities. In addition to these on-going efforts, the District has also been proactive in implementing storm water management activities in the design and construction of new schools, as well as additions to existing schools. Some examples of the District's on-going efforts include:

A. High Performance School Resolution

In January 2001, the Board of Education ("Board") adopted a High Performance School Construction resolution directing the District to develop design criteria for new school construction and renovation of existing schools which were to include such measures as site orientation, water efficiency, waste management, and storm water management. The storm water management criteria adopted by the District include construction erosion and sedimentation control during construction activities and post-construction storm water management such as limiting storm water run-off or treating storm water run-off.

B. Existing Facilities

The District has developed Storm Water Management Procedures for bus garages and maintenance and operations facilities. These procedures provide guidance to these facilities to comply with the applicable storm water regulations. In addition, the District has been collaborating with the Los Angeles County Department of Public Works to implement watershed management plans at select schools.

C. BB Bond Program

Proposition BB was approved by voters in April 1997 to fund repairs and upgrading of existing schools and facilities and construction of new schools. Under the BB Bond Program, approximately 450 school sites are scheduled for removal and replacement of playground surfaces, of which greater than fifty percent have been completed. Additionally, schools are allocating thirty percent of their construction budgets to the greening of the school campuses by introducing tree and turf areas which will reduce the quantity of storm water runoff by creating additional pervious surface and by providing natural filtration.

D. School Greening

In conjunction with the Los Angeles Department of Water and Power, the District is participating in its second year of the Cool Schools Program. The Cool Schools Program is currently in the planning stages for Year 3. During Year 1 and Year 2 of the Cool Schools Program, approximately 6000 trees have been planted on various schools and facilities throughout the District. In addition to the intrinsic benefits from the creation of new green space, the program also reduces the quantity of storm water runoff by creating additional pervious surface, as well as improving the quality of the runoff by providing natural filtration.

E. District Design Guidelines

The design guidelines adopted by the District require the runoff from school sites to be collected into catch basins prior to draining offsite. During a significant rain event, this design will prevent storm water from flowing onto the sidewalk and into the public right of way. The catch basin is also designed to contain pollutants in the event of an unauthorized release.

F. Integrated Pest Management Program

The District also has also designed and implemented an Integrated Pest Management Program ("IPM") in accordance with federal and state laws and regulations, and county ordinances. Under the IPM, pests will only be controlled to protect the health and safety of students and staff, and the integrity of school

buildings and grounds. Pesticides are not used to control pests solely for aesthetic reasons alone. The implementation of the IPM results in a significant decrease in the use of pesticides that could potentially impact storm water.

G. Collaborative for High Performance Schools

The Collaborative for High Performance Schools ("CHPs") aims to increase the energy efficiency of schools in California by marketing information, services, and incentive programs directly at school districts and designers. The goal of CHPs is to facilitate the design of high performance schools environments that are not only energy efficient, but also healthy, comfortable, well lit and contain the amenities needed for a quality education. Out of the 80 new schools designed by the District, 20 have qualified as a High Performance School under CHPs requirements, and 45 out of the 80 are within 4 points of qualifying. The CHPs environmental criteria also include storm water measures.

H. Hazardous Waste Management Procedures for Schools

The District has approved Hazardous Waste Management Procedures for Schools. These procedures set forth the requirements for the management and storage of hazardous wastes at schools, as well as the proper method of disposal. These procedures will significantly reduce the risk of hazardous wastes from polluting storm water.

III. Areas of Concern

A. Economic Considerations

The Draft Permit fails to properly consider the economic considerations of implementation. The SWRCB is required to consider economic considerations in developing the Draft Permit. At a minimum, a cost/benefit analysis of the fiscal impacts of the Draft Permit is appropriate. Numerous provisions in state and federal law require a cost/benefit analysis to be conducted and also require that economic considerations be addressed in adopting NPDES Permits. The District requests that the SWRCB review the current requirements of the Draft Permit and conduct the appropriate analysis, and revise the Draft Permit accordingly.

In the event the SWRCB adopts the Draft Permit without any modifications, it will cause extreme administrative and economic hardship to the District. The District will be forced to allocate substantial fiscal and administrative resources over the next few months to meet the March 10, 2003 deadline. As set forth below, the resources required just to meet the March 10, 2003 filing date far exceed the District's capabilities.

For example:

1. If the District is required to prepare a Storm Water Management Plan ("SWMP") for each school site, the estimated cost for 944 sites would exceed $1,800,000.

2. If the District is required to prepare Annual Reports for each school site, the annual cost to the District would exceed $1,000,000 per year.

3. The estimated cost of implementing the SWMP at each school site exceeds $1,500,000.

This conservative estimate of the costs to comply with these Draft Permit requirements is troubling. Especially since these cost estimates do not include additional staffing, training, and related administrative costs. It is clear from this analysis alone, that the District will be unable to comply with the current requirements of the Draft Permit.

In order to streamline some of these excessive fees, the District recommends the submittal of one SWMP for elementary schools, one SWMP for middle schools, one SWMP for high schools and one SWMP for all maintenance and operations facilities. The District further recommends these submittals to be due on a revolving basis.

B. Existing Deadlines

The draft Permit currently requires the District to "submit to the appropriate Regional Water Quality Control Board ("RWQCB") by March 10, 2003 a Notice of Intent, a Storm Water Management Program and the appropriate fee." (Draft Permit, p. 4)

The District believes the March 10, 2003 filing deadline is unrealistic based on the magnitude of resources required to accomplish this task. As previously referenced, LAUSD is comprised of over 900 schools. If the District is required to submit an NOI, SWMP and fee for each of these locations, it will realistically take a few years to accomplish. Not only does the District not have the administrative capability to complete this task, it also does not have the financial resources to fund it. While the District supports the current efforts of the State Board, it would be unrealistic to expect the District to do more than what is currently in place to mitigate its potential impacts to storm water by March 10, 2003.

The District recommends one NOI for each of the SWMP categories recommended in Section A above as one option for the State Board to consider.

C. Previously Approved Projects

The District is concerned that the Projects which have already been approved by the Division of State Architects, the Office of Public School Construction, the California Department of Education and the Department of Toxic Substances Control may now potentially be subject to additional design requirements not in effect at the time of design or approval. Since the Draft Permit is not clear how the State Board will address those projects which have received the requisite approvals, but may not have been fully funded, the District requests clarification on this issue. Additionally, there are some projects which have been designed, but not yet submitted to the Office of Public School Construction, which would be significantly impacted if the Draft Permit were to apply to these projects.

It would not be practical or possible for the District to re-open any of the Projects. For many of the projects construction has already begun or construction schedules are being negotiated. For others, Requests for Proposals have been distributed and bids are currently in the process of being reviewed and approved. The State Board and the Regional Board should clarify the projects which the Draft Permit is intended to apply to.

D. Draft Permit Control Measures

While the District understands the Draft Permit is not designed to describe how to comply, the District believes there are certain Draft Permit Control Measures which may not be feasible or appropriate for the District to be required to implement.

For example, the Public Participation element and the Illicit Discharge Detection and Elimination element may not be feasible to implement. At best, the District would be able to identify what BMPs are already in place to address the State Board's concerns with regard to these Draft Permit Control Measures.

E. Annual Reporting Requirements

Section E, page 23 of the Draft Permit requires the District to "submit annual reports to the appropriate RWQCB by September 15th of each year (first to be submitted September 2004) or as otherwise required by the RWQCB Executive Officer ("EO"), unless exempted under Provision D.6."

If the Draft Permit is adopted without modification of this Annual Reporting requirement, the District will be required to prepare and submit over 900 reports per year. If these annual reports are prepared by outside consultants, recent proposals have ranged from $1,000 to $3,000 per site. This would result in an additional compliance cost ranging from $900,000 to $2,700,000. If the District

attempted to handle this task in-house, we would need to hire at least 10 more staff to manage the storm water programs.

The District recommends one annual report for elementary schools, one for middle schools, one for high schools, and one for all maintenance and operations facilities.

F. Reduce Pollutants to the Maximum Extent Practicable

On page 8 of the Draft Permit, the State Board provides an overview of the maximum extent practicable ("MEP") requirements of the Clean Water Act ("CWA") § 402(p)(3)(B)(iii). To clarify, under § 402(p)(3)(B)(iii) of the CWA, permits for discharges from municipal storm sewers:

"(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants."

The State Board should consider including this language in the Draft Permit.

The Draft Permit also states that, "the MEP approach is an ever evolving, flexible and advancing concept, which considers technical and economic feasibility." (Draft Permit, p.8) While MEP may be "ever evolving", the Draft Permit should not impose an "open-ended" ever changing standard that ignores the specific requirements and objectives of an NPDES Permit under the CWA and the Porter-Cologne Act.

Additionally, in Section B(2), Discharge Prohibitions, page 18, the Draft Permit prohibits "Discharges from the MS4s regulated under this permit that cause or threaten to cause a nuisance." This requirement appears to be directly contrary to the express standard under the CWA to control the discharge of pollutants to the maximum extent practicable.

The Draft Permit should be revised to clarify how a permittee can control discharges that "threaten" to cause a nuisance. This vague language leaves the door open for the State Board and the Regional Board to create a higher threshold for MEP.

IV. Conclusion

For the reasons set forth herein, the District respectfully requests that the State Board revise the Draft Permit to address the above-mentioned concerns. In the alternative, the District encourages the State Board to sponsor an additional working group for the State Board to listen to and discuss the concerns

of the school districts and to consider either amending the Draft Permit or drafting a School District General Permit.

Unless the State Board agrees to reasonable alternatives to the filing and reporting requirements contained in the Draft Permit, the District, and most other school districts, will not be able to comply in a timely manner. The cost and time constraints on the larger school districts will force us to re-direct funds earmarked for education purposes to develop storm water programs.

There should be no misunderstanding that LAUSD fully supports the same objectives of the State Board and the Regional Board to preserve, restore and enhance the many beneficial uses of the ocean and water bodies of Southern California. We hope that you will consider our comments and suggested changes in this spirit.

Very truly yours,

Jay F. Golida

Cc: Ms. Jarma Bennett, SWRCB (by facsimile and email)
Dennis Dickerson, Executive Officer. LARWQCB (by facsimile)
Dr. Xavier Swamikannu, LARWQCB (by facsimile)

LOS ANGELES UNIFIED SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
355 S. GRAND AVENUE, SUITE 1153
LOS ANGELES, CALIFORNIA 90071
TEL: (213) 633-7434
FAX: (213) 633-7520

ROY ROMER
SUPERINTENDENT OF SCHOOLS

HAROLD J. KWALWASSER
GENERAL COUNSEL

JAY F. GOLIDA
ASSOCIATE GENERAL COUNSEL

December 23, 2002

VIA FACSIMILE AND U.S. MAIL
Mr. Arthur G. Baggett, Jr.
Chair, State Water Resources Control Board
1001 I Street
Post Office Box 100
Sacramento, California 95812

Re: October 28, 2002 Draft Waste Discharge Requirements For Storm Water Discharges From Small Municipal Separate Storm Sewer Systems

Dear Chairman Baggett:

The Los Angeles Unified School District ("LAUSD" or the "District") attended and provided testimony at the December 2, 2002 hearing ("Hearing") with respect to the October 28, 2002 Draft Waste Discharge Requirements For Storm water Discharges From Small Municipal Separate Storm Sewer Systems ("Phase II Permit"). For the most part, our testimony reaffirmed many of the concerns expressed by other school districts at the hearing and highlighted many of the significant issues raised in our November 27, 2002 comment letter ("District Letter") which is hereby incorporated by this reference and attached as Exhibit A.

The purpose of this letter is to provide additional comments to the State Water Resources Control Board ("State Board") with regard to the Phase II Permit and to specifically respond to the State Board's request for the submittal of additional information. These requests made by the State Board were further clarified in the December 10, 2002 email sent by the State Board to the permittees and other interested stakeholders and are the basis for this letter.

The issues identified by the State Board requiring further comment by the schools districts included: (1) the request by school districts for a one year extension for the submittal of their storm water management plans ("SWMP"); (2) the request by the school districts to have the State Board "grandfather", or otherwise exempt those projects already submitted to the Department of the State Architect ("DSA") from the construction and post-construction site runoff control requirements of the Phase II Permit; and (3) the request by the school district permittees currently covered by the General Industrial Permit (GIP") to

TECS

Environmental Compliance Services

106 South Mentor Avenue - Suite 125 • Pasadena, CA 91106

(626) 396-9424 • fax (626) 396-1916

January 11, 2005

Mr. Stan Martinson, Chief
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Attn.: Jennifer Mu and Thomas Filler

Subject: Comments on the Development of a Statewide Policy for the Implementation of the Stormwater Program □

Dear Mr. Martinson:

TECS Environmental, and the 20 municipalities in Los Angeles County, which it represents on storm water matters, supports comments submitted to you by the Coalition for Practical Regulation relative to the development of a state-wide storm water policy.

In addition, my clients would like the State Water Resources Board ("Board") to clarify Part 2, paragraph 2 of the Receiving Water Limitations section of the current Los Angeles County MS4 NPDES permit. That paragraph reads:

> "Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause or contribute to a condition of nuisance."

My clients would like the Board to clearly delineate what discharges they are responsible for and which ones they are not. From their point of view, municipalities should be responsible only for discharges over which they have direct control as an institution or corporate entity. These discharges include, but are not limited to water and sewage discharges from municipally operated facilities and discharges associated with street, vehicle/equipment maintenance. However, with respect to discharges over which municipalities have no control

such as undetected illegal dumping, and discharges over which they have only limited control, such as discharges from residential, industrial and commercial facilities, municipal responsibility should be limited to public education and code enforcement.

To put it another way, municipalities should only be responsible for correcting water quality standard exceedances if they have direct control over the discharges causing them. With respect to discharges over which they have no control or limited control, municipalities should only be responsible for addressing an exceedance through public education and code enforcement. In no case should the municipality be made to correct such discharges through structural best management practices.

Making this distinction now or in the next MS4 permit would do a great deal in reducing worst case fears and anxieties among municipal discharges and would, thereby, would reduce the need for litigation.

Thank you for considering this request and for including these comments into the public record.

Sincerely,

Ray Tahir
Principal

cc: CPR Members

BEST BEST & KRIEGER LLP
A CALIFORNIA LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
LAWYERS
402 WEST BROADWAY, 13TH FLOOR
SAN DIEGO, CALIFORNIA 92101-3542
(619) 525-1300
(619) 233-6118 FAX
BBKLAW.COM

RIVERSIDE
(951) 686-1450

INDIAN WELLS
(760) 568-2611

ONTARIO
(909) 989-8584

ORANGE COUNTY
(949) 263-2600

SACRAMENTO
(916) 325-4000

MARGUERITE S. STRAND
(619) 525-1346
MARGUERITE.STRAND@BBKLAW.COM

January 6, 2005

Jennifer Mu and Thomas Filler
Division of Water Quality, Storm Water Section
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812-0100

Re: Comments on the Development of a Draft Policy for the Implementation of the Storm Water Program

Ladies and Gentlemen:

Best Best & Krieger LLP submits these comments on behalf of over seventy (70) public entities (the "Permittees") regarding the development of a draft policy for the implementation of a storm water program, notice of which was publicly posted on November 19, 2004. The Permittees we represent include municipalities, water districts, school districts, community college districts, community services districts, and other special districts.

The Permittees understand the impact of storm water pollution and seek to proactively work with the State Water Resources Control Board ("SWRCB") in developing a policy for the implementation of a storm water program which will decrease and discourage pollution and meet the other objectives of storm water compliance. Therefore, in our comments below, we have focused on the issues in which the SWRCB has expressed an interest, specifically those issues which were outlined in the public notice posted on November 19, 2004 and which will be discussed at the listening sessions being offered by the SWRCB on this matter. None of the comments or examples included below are intended to limit the scope of the analysis of the SWRCB in its responses.

COMMENTS

1. Cross-Program Issues

It remains unclear how the total maximum daily load ("TMDL") requirements are related to current storm water objectives. Are the Permittees to be held responsible for violations of the TMDL standards? If so, it is unclear how each Permittees' specific contribution to the TMDL will be ascertained. Because of these concerns, the Permittees urge the SWRCB to adopt a policy for storm water implementation which gives physical monitoring and other point source

solutions adequate time to effectively reduce the discharge of storm water pollutants, without currently incorporating any TMDL requirements into the storm water program.

2. Monitoring Issues

To monitor the pollutant load of storm water discharges, assessments of varying accuracy and precision are available. Separate monitoring efforts must be made to collect information on biological contaminates, chemical pollutants, and particulate levels. Due to the varying expense of the testing methods available for each of these categories of pollutants (for example biological assessments generally require laboratory analysis and chemical pollutant detection may require toxicological testing) the Permittees seek a clarification of how accurate and precise a monitoring technique must be before it may be employed to detect pollutants.

Due to the budgetary stringencies of many Permittees, including several school districts which even now lack sufficient funding for adequate textbooks, and maintenance of older facilities, Permittees seek a clarification of which entity is responsible for funding this monitoring scheme. Is the Permittee to bear the full cost of implementing an expensive storm water monitoring program, or is the State to fully or partially fund the program?

Compliance with permit requirements is assessed in part by sampling a Permittees' storm water discharges and testing them for contaminants. The Permittees seek a clarification of the location from which the samples used for this assessment must be collected. Due to the presence of vegetative buffers and other remedial measures, pollutant concentrations in storm water may vary widely between the origin of the discharge and the storm water's eventual entry into an MS4 regulated waterway. Permittees wish to know that their efforts to reduce total storm water flow and the elimination of pollutants carried by such a flow will be considered by the SWRCB in its requirements regarding the location of storm water testing.

It is unclear how benchmarks and trends in pollution loading will be used to assess Permittees' storm water programs. Permittees seek a clarification as to who or what entity will establish these benchmarks and trends. Will benchmarks/trends be established on a state level, on a Regional Board level, on levels specific to the type of Permittee, or on an individual Permittee level? It remains unclear who will be responsible for developing benchmarks/trends, the timetable under which such benchmarks/trends must be completed, and which entity will be responsible for funding the development and implementation of benchmarks/trends.

The Permittees seek clarification of how a policy to implement a storm water program will affect group monitoring schemes. Numerous Permittees currently utilize a group monitoring scheme to assess their discharges of storm water associated with industrial activities. In view of this, the Permittees urge the SWRCB to clarify whether the storm water program policy is intended to encourage and facilitate the continued use of group monitoring schemes, or whether

the policy is intended to discourage and diminish the effectiveness of such group monitoring schemes which had been successfully implemented by various school districts.

3. Compliance Issues

The Permittees seek clarification as to the types of methods and standards which will be employed by the Regional Boards to assess compliance with the storm water program policy. It is unclear whether the Regional Boards will be conducting spot-checks or a regular routine of inspections and examinations. It is also unclear if the Regional Boards will give notice to the Permittees prior to their compliance assessments. Finally, Permittees urge the SWRCB to clarify whether the methods and standards used to judge compliance will be promulgated on a State-wide basis or if they will be adopted by the Regional Boards individually.

Further, the Permittees ask whether the standards which currently apply to storm water discharge permits will remain unchanged under the storm water program policy. Specifically, Permittees wish to know if the SWRCB is seeking to make the "maximum extent practicable," "best available technology," or "best conventional technology" standards more difficult to achieve. For additional clarity, Permittees want to know if the SWRCB seeks to leave these standards unaltered under the storm water program policy.

Permittees request the SWRCB clarify the amount of time that a Permittee is allowed before they must implement a storm water management program. Currently, Small MS4 Permittees designated by their Regional Board have 180 days in which to adopt and implement a storm water management program. Permittees seek a clarification of what evidence of "implementation" must be presented in order to comply with the storm water program policy. Is mere adoption of a storm water program sufficient? If not, what specifically is the SWRCB seeking in the "implementation" of a storm water program.

It is unclear what the SWRCB intends when they require that a storm water management program show "results." The Permittees seek a clarification of what kind of "results" must be evidenced. Is a reduction in storm water pollutants required, or is education of Permittee staff and remedial measure implementation sufficient even in the absence of reductions in storm water pollutant levels or, will a holistic approach, based on the Small MS4 requirements (six Minimum Control Measures) be viewed as a successful 'result'?

Permittees urge the SWRCB to afford adequate time to secure funding before requiring that a storm water program show "results." Because the Small MS4 storm water discharge permits are issued with a five year term and because Permittees are frequently operating on extremely limited budgets, Permittees seek a clarification of what, if any, penalties will be imposed when minimal results are achieved in the first or second year of the storm water program. Additionally, Permittees want to know whether funding is available, or can be made available, to assist them in the implementation of the storm water program should the Permittee

lack adequate funding to implement the storm water program within the time required for compliance.

The Permittees seek clarification as to what the SWRCB intends by using "load reductions" in order to judge permit compliance. It is unclear who or what entity will be developing these load reduction standards. The Permittees also seek clarification as to who is financially responsible for the development of such load reductions, and how load reductions will be used to determine if storm water pollutant levels are in compliance with permit requirements.

4. Standards Issues

Permittees seek clarification on the types of quantitative parameters to be used to determine compliance with the storm water policy. Specifically, Permittees are concerned that the use of toxicity parameters may not be truly "quantitative" because the results of toxicity testing may vary depending on the sensitivity of the test subject used in the analysis. Permittees are concerned that employing less than objective means for determining pollutant levels could produce disparate results from sample to sample of storm water. Due to this concern, Permittees urge the SWRCB to give careful consideration to the methods of testing which will be used to determine compliance with the storm water policy.

It is unclear what standards will govern storm water samples collected during wet weather conditions. As the amount of storm water increases, the concentration of certain pollutants, such as chemicals, tends to be diluted, whereas the presence of other types of pollutants, such as certain types of biological agents, tends to increase. It is unclear if storm water monitoring and sample collection will occur during wet weather conditions, and if so by what compliance standards such samples will be judged.

Permittees seek a clarification of what "wet weather conditions" entail. Will a state-wide standard be established, or will "wet weather conditions" be defined based on local climate conditions and weather patterns? Additionally, will "wet weather conditions" be assessed based on the amount of precipitation which falls in an area, or will it be defined according to the quantity of unabsorbed water which remains atop the ground? The Permittees urge the SWRCB to carefully consider these factors when promulgating the standards which apply during wet weather conditions.

5. Permitting Issues

The Permittees ask the SWRCB to consider how consistency among the Regional Boards can be promoted. Because Permittees may operate facilities which are within the jurisdiction of two or more Regional Boards, the Permittees desire that the eventual implementation of the storm water program policy be consistent among the various Regional Boards. Failure to

establish consistency among the Regional Boards may result in a Permittee being subject to conflicting requirements or conflicting deadlines. The Permittees urge the SWRCB to carefully examine the requirements and timing deadlines that may apply pursuant to the policy and to assure that both are established and enforced constantly by all Regional Boards.

The Permittees seek clarification of how the storm water program policy will be applied when jurisdiction over one watershed area is divided between two or more Regional Boards. Of particular concern is the situation where a Permittee owns two separate facilities in the same watershed, but each facility is under the jurisdiction of a separate Regional Board. This situation could place a Permittee in an untenable position where its facilities are subject to conflicting permitting requirements. The Permittees further seek a clarification of how their rights and obligations under the storm water policy would be affected by such a situation. The Permittees encourage the SWRCB to consider this situation and to develop provisions which can satisfactorily resolve such issues.

The Permittees want to know if the definitions, standards, and the stringency with which each are defined and enforced will be the same under the storm water program policy as applied to both the Phase I and Phase II permit schemes. It is unclear that the terminology and standards heretofore used by the Permittees will remain unchanged under the storm water program policy. The Permittees encourage the SWRCB to allow any definitions and standards applied under the Phase I and Phase II schemes to remain as presently defined. Permittees believe that this will facilitate a smoother transition into the storm water program policy and also ease the policy's implementation and enforcement.

CONCLUSION

We trust the SWRCB will take a moment to consider these comments and address the questions and concerns raised herein before adopting a final policy for the implementation of a storm water program. We look forward to working collaboratively and cooperatively with the SWRCB to address storm water pollution through the final storm water policy. Best Best & Krieger LLP is pleased to provide you with these comments of the Permittees, and the Permittees thank you in advance for the careful consideration that you have given to their concerns.

Very truly yours,

Marguerite S. Strand
Charity Schiller
for BEST BEST & KRIEGER LLP

MSS/CS:djg

MSS\306776.1

From: <mbakaldin@ci.san-leandro.ca.us>
To: <jims@acpwa.org>, <jmu@waterboards.ca.gov>, <tfiller@waterboards.ca.gov>
Date: 1/10/05 8:30AM
Subject: RE: Development of a Draft Policy For The Implementation of the Storm Water Program

Jim,

I would ask that you and anyone else that represents our program stress to the state that any new requirements are unfunded mandates. San Leandro's stormwater program is funded through a parcel tax that, due to the stringent Prop 218 requirement, has remained unchanged since 1994. With the large deficit that we are running in the general fund we simply do not have the means to pay for any additional mandates. One suggestion is that if forced to implement new requirements we as a county explore the vehicle license fee funding introduced by San Mateo County. Thanks,

Mike Bakaldin
City of San Leandro

-----Original Message-----
From: Scanlin, Jim [mailto:jims@acpwa.org]
Sent: Monday, January 03, 2005 11:18 AM
To: 'jmu@waterboards.ca.gov'; 'tfiller@waterboards.ca.gov'
Cc: Tom (E-mail); Dale Bowyer (E-mail); Abbas (E-mail); Alex Ameri (E-mail); Bgross (E-mail); Brian (E-mail); Brooke Levin (E-mail); bsilva (E-mail); Carla Schultheis (E-mail); Chris Andres (E-mail); cvasquez (E-mail); dakagi (E-mail); Darren (E-mail); Debra Kunisawa (E-mail); Dennis Jones (E-mail); Diamera (E-mail); Dije Ndreu (E-mail); Fred (E-mail); G. Robert Hale (E-mail); GGrimm (E-mail); Gosselin, Sharon; Hank Van Dyke (E-mail); HOLLY GUIER (E-mail); Jan O'Hara (E-mail); Jennifer Krebs (E-mail); Jim Barse (E-mail); Camp, John; John_Michels (E-mail); KCote (E-mail); klichten (E-mail); Lesley (E-mail); Linda Ajello (E-mail); Linda Bulkeley (E-mail); Loren Jensen (E-mail); Lori Pettegrew (E-mail); Louise (E-mail); Mary Lim (E-mail); Matthew Naclerio (E-mail); Melissa Morton (E-mail); Bakaldin, Michael; Mona Olmsted (E-mail); Myriam Zech (E-mail); Nathan French (E-mail); Nicole Narver (E-mail); Peter Schultze-Allen (E-mail); May, Ron; Saied Aminian (E-mail); Steve Aguiar (E-mail); Steve Cusenza (E-mail); Terry (E-mail); W Madison (E-mail)
Subject: Development of a Draft Policy For The Implementation of the Storm Water Program

Dear Ms. Mu and Mr. Filler,

These comments are filed with the State Board on behalf of the Alameda Countywide Clean Water Program ("ACCWP") in response to the November 19, 2004 notice regarding Development of a Draft Policy For The Implementation
of The Storm Water Program. The ACCWP MS4 is comprised of 17 local government agencies that have joined together to form the ACCWP. The permittees in the ACCWP are regulated by a "third round" NPDES permit issued
by the San Francisco Bay Regional Board, Order R2-2003-0021.

The ACCWP and the Program permittees are committed to full compliance with the requirements of the NPDES permit and the mandates of state law and the federal Clean Water Act relating to urban stormwater runoff. Our record in the San Francisco Bay Region demonstrates this commitment. The ACCWP welcomes the consideration of this draft Policy by the State Board. The ACCWP is especially interested the following issues in the State Board's consideration of this draft Policy: the relationship between TMDLs and permit requirements; timelines for TMDL and other requirement compliance; clear definition of standards so as to allow permittees sufficient time to provide the necessary funding for mandated programs; clarification and simplification of monitoring and reporting requirements; and the need for providing some general statewide consistency of standards while at the same time allowing for regional and program specific needs and differences. We will provide more detailed comments as the draft Policy progresses. It should also be noted that MS4s in the San Francisco Bay region are currently meeting and discussing with Regional Board staff the development of a regional municipal storm water permit for the San Francisco Bay region.

Representatives of the ACCWP will attend the public meeting in Oakland on January 21, 2005 and will participate in the ongoing State Board process in the development of this draft Policy. Please provide us with notice of your proceedings.

Jim Scanlin
Alameda County Public Works Agency
Clean Water Division
(510) 670-6548

CC: <tem@rb2.swrcb.ca.gov>, <dcb@rb2.swrcb.ca.gov>, <amasjedi@ci.pleasanton.ca.us>, <Alex.Ameri@ci.hayward.ca.us>, <bgross@albanyca.org>, <blorimer@ci.pleasanton.ca.us>, <blevin@oaklandnet.com>, <bsilva@ci.fremont.ca.us>, <carla@acpwa.org>, <chrisa@acpwa.org>, <cvasquez@ci.union-city.ca.us>, <dakagi@ci.berkeley.ca.us>, <dggreenwood@ci.livermore.ca.us>, <debra.kunisawa@ci.hayward.ca.us>, <dennis.jones@newark.org>, <diamera@acpwa.org>, <Dije.Ndreu@ci.hayward.ca.us>, <fejarvis@eoainc.com>, <bobh@acpwa.org>, <gjgrimm@mindspring.com>, <sharon@acpwa.org>, <hvan-dyke@ci.emeryville.ca.us>, <HOLLY.GUIER@newark.org>, <jbo@rb2.swrcb.ca.gov>, <jak@rb2.swrcb.ca.gov>, <jbarse@ci.alameda.ca.us>, <JCamp@ci.san-leandro.ca.us>, <John_Michels@dot.ca.gov>, <kcote@ci.fremont.ca.us>, <khl@rb2.swrcb.ca.gov>, <lcestes@oaklandnet.com>, <lajello@ci.piedmont.ca.us>, <bulkeley@eoainc.com>, <ljensen@ci.berkeley.ca.us>, <lap@eoainc.com>, <louisec@acpwa.org>, <mlim@zone7water.com>, <mnaclerio@ci.alameda.ca.us>, <Melissa.Morton@ci.dublin.ca.us>, <molmsted@zone7water.com>, <mlz@swrcb.ca.gov>,

<nfrench@ci.berkeley.ca.us>, <nnarver@ci.fremont.ca.us>, <pschultze-allen@ci.emeryville.ca.us>,
<HMay@ci.san-leandro.ca.us>, <saied.aminian@ci.dublin.ca.us>, <smaguiar@ci.livermore.ca.us>,
<scusenza@ci.pleasanton.ca.us>, <terry_cooke@urscorp.com>, <wmadison@oaklandnet.com>